MACE PRESENTED TO THE COMMONWEALTH HOUSE OF REPRESENTATIVES BY THE HOUSE OF COMMONS

SPEAKER'S CHAIR PRESENTED TO THE NEW ZEALAND PARLIAMENT
BY THE HOUSE OF COMMONS

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

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USUAL PARLIAMENTARY SESSION MONTHS

Parliament.	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
United Kingdom	★	★	★	★	★	★	★	★	★	★	★	★
Northern Ireland	★	★	★	★	★	★	★	★		★	★	★
Channel Is. — Jersey	★	★	★	★								
Channel Is. — Guernsey												
Channel Is. — Alderney												
Canada; Federal	★	★	★	★	★							
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		★	★	★								
Canadian Provinces — Newfoundland												
Australian Commonwealth			★	★	★				★	★	★	★
Australian States — New South Wales	*No set rule obtains.*											
Australian States — Queensland			★	★				★	★	★	★	★
Australian States — South Australia								★	★	★	★	★
Australian States — Tasmania		★	★						★	★	★	★
Australian States — Victoria						★	★	★	★	★	★	★
Australian States — Western Australia							★	★	★	★	★	★
New Zealand						★	★	★	★	★	★	
Union of South Africa	★	★	★	★	★	★						
Union Provinces — Cape of Good Hope			★		★							
Union Provinces — Natal			★	★	★	★						
Union Provinces — Transvaal			★	★	★	★						
Union Provinces — Orange Free State			★			★						
South-West Africa			★	★	★							
Southern Rhodesia				★	★	★	★				★	
India — Parliament of India		★	★	★				★			★	★
India — Madras	★	★	★					★	★	★	★	★
India — Bombay		★						★				
India — Uttar Pradesh	★	★	★					★	★			
India — Bihar		★			★		★			★		
India — West Bengal												
India — East Punjab				★	★					★	★	
India — Orissa		★	★					★	★			
India — Madhya Pradesh	*No set rule obtains.*											
Pakistan — Constituent Assembly		★	★		★							★
Pakistan — East Bengal		★	★					★	★			
Pakistan — West Punjab												
Pakistan — North-West Frontier Province			★						★	★		
Pakistan — Sind		★	★					★	★			
Bermuda	*No set rule obtains.*											
British Guiana				★	★	★				★	★	★
Ceylon	★	★	★	★		★	★	★	★	★	★	★
East African High Commission	★			★					★			
Gold Coast and Ashanti			★			★			★			★
Jamaica					★					★		
Kenya Colony and Protectorate		★			★			★		★		
Federation of Malaya, Malta, G.C. & Mauritius	*No set rule obtains.*											
Nigeria			★					★				
Northern Rhodesia											★	★
Singapore Colony		★	★	★	★	★	★	★	★	★	★	★
The Sudan			★	★	★					★	★	★
Tanganyika Territory	*No set rule obtains.*											
Trinidad and Tobago, B.W.I.		★	★	★						★	★	★

[1] *No set rule for other months.*—[*Ed.*]

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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. XX FOR 1951

GEORGE VI

On a slip inserted in front of the title page of our last Volume, after it was already in type, we gave the copy of a cable sent to the Private Secretary, Buckingham Palace, offering the heartfelt sympathies of the members of our Society with Her Majesty the Queen and Their Majesties the Queen Mother and Queen Mary, upon the death of King George VI, together with the gracious reply of Her Majesty Queen Elizabeth II.

In this issue, we report how the Parliaments of our Commonwealth received the sad news of this great loss.

In every part of his far-flung Dominions, the death of King George VI was mourned by his people, of all colours, creeds and races. Bells were tolled, Parliament Buildings were draped, royal salutes were fired, flags flown half-mast and Commemoration Services held, while the people demonstrated their deep sorrow, for not only had they lost a good and gracious Sovereign, but a kind Father and a dear Friend, ever thoughtful of their interests, their welfare and a sharer with them in their joys and sorrows.

Mourners filled the churches, not only in the great cities, but in the towns and villages. The 2 minutes' silence was observed, in the Parliaments, on the railways, in the ships at sea; even in the factories and in the fields workers stood silent by their work in humble tribute to his memory.

King George VI was honoured for many things—his wisdom, his courage, his devotion to duty and his kindness. He was a man at the head of the nations, a man of faith and simple goodness, a man who walked humbly with God.

The great gatherings in all parts of his Realm, testified to the loss his people suffered by his death.

Now he lies at rest among his fathers in the historic St. George's Chapel, Windsor. A great King, a good man and a loving father to his people has passed, but memory of him will ever dwell in the hearts of his loyal and devoted subjects.

ELIZABETH II

There being no break in the Sovereignty, while our hearts still mourn the death of our late King, we, as members of this Society, serving Parliaments in which the Crown is the ruling constituent, humbly and devotedly offer to our new Sovereign, Her Majesty Queen Elizabeth II, our sincere congratulations upon Her Accession to the Throne. We pray that the Blessing of Almighty God may guide and sustain Her Majesty in Her labours and that Her reign may be great and glorious.

Long may our Queen discharge the duties of Her high and important office, under the many constitutions of our Ocean Commonwealth.

DECLARATION BY HER MAJESTY THE QUEEN

On the day of the Accession to the Throne Her Majesty was pleased to make a declaration in the following terms:

YOUR ROYAL HIGHNESSES, MY LORDS, LADIES AND GENTLEMEN,—

By the sudden death of my dear father, I am called to assume the duties and responsibilities of sovereignty.

At this time of deep sorrow, it is a profound consolation to me to be assured of the sympathy which you and all my peoples feel towards me, to my mother and my sister and to the other members of my family. My father was our revered and beloved Head, as he was of the wider family of his subjects; the grief which his loss brings is shared among us all.

My heart is too full for me to say more to you to-day than that I shall always work, as my father did throughout his reign, to uphold constitutional government and to advance the happiness and prosperity of my peoples spread, as they are, all the world over. I know that in my resolve to follow his shining example of service and devotion, I shall be inspired by the loyalty and affection of those whose Queen I have been called to be, and by the counsel of their elected Parliaments. I pray that God will help me to discharge worthily this heavy task that has been laid upon me so early in my life.

QUEEN MARY

The type of this Volume was already set up in section page proof form when our much-beloved Queen Mary passed away. We now therefore, in this last-minute manner, give the message of sympathy which the members of our Society sent to the Queen and other Members of the Royal Family, as well as the reply which Her Majesty the Queen was so gracious as to direct to be sent:

March 26, 1953.

Private Secretary, Buckingham Palace, London, England.

Members Society Clerks at Table Parliaments Legislatures our Commonwealth and Empire respectfully offer heartfelt sympathies to the Queen, Queen-Mother Earl of Athlone Princess Alice and other members of the Royal Family in their great sorrow at the passing of Her Majesty Queen Mary stop That God grant them comfort is our fervent prayer. Clough Parliament Cape Town.

BUCKINGHAM PALACE

April 1, 1953.

Owen Clough, Esq., c/o The Senate, Houses of Parliament, Cape Town.

The Queen desires me to express Her sincere thanks to you and all who joined with you in your kind message of sympathy.—Private Secretary.

I. EDITORIAL

Introduction to Volume XX.—Our condolences to the new Sovereign, to Their Majesties the Queen Mother and Queen Mary upon the death of King George VI are expressed both in a last-minute slip inserted in Volume XIX and in prefatory words to this issue of the JOURNAL which also includes our congratulations to Her Majesty Queen Elizabeth II upon Her Accession to the Throne.

The passing of King George VI, His Funeral and the proceedings in the Lords and Commons upon His demise as well as the Accession of the Royal Princess Elizabeth to the Throne, are described in Articles II and III hereof, while Article IV records the corresponding steps taken in Northern Ireland, the Channel Islands and in the principal member-countries of the Commonwealth Overseas, which show, in some directions, a changing practice, both in regard to the taking of the Oath of Allegiance to the new Sovereign as well as in the terms of the Proclamation of Accession itself.

Another Article gives the history of the taking of the Oath by members of the House of Commons.

All these proceedings took place in 1952, but notice of them could not be delayed until the publication of the Volume of our JOURNAL surveying that year.

The most outstanding constitutional event in 1951 has been the contest between the Parliament of the Union of South Africa and her Courts of Justice over a Bill[1] to remove from the common Parliamentary Voters' Roll in the Cape Province, the Coloured voters (the Natives, *i.e.*, Africans, having been removed by the Representation of Natives Act in 1936) by the two Houses of Parliament sitting bicamerally by ordinary majority, instead of a Joint Sitting of both Houses by a not less than two-thirds vote of their total membership of both, as required by the Constitution, in the case of amendment of its "entrenched provisions".

The actual proceedings on the passage of this Bill through the two Houses of Parliament are given in the Editorial, copiously supplied with footnotes to Minutes and Votes of Proceedings and the *Hansards* of both Houses, while an Article by Professor Denis Victor Cowen deals with the history of this phase of the crisis; the second phase, which occurred in 1952, being reserved for report in our next Volume.

Another Article deals with the application of the Regency Acts 1937 and 1943 necessitated by the illness of King George VI and powers exercised by the Counsellors of State thereunder.

A most comprehensive Article describes the powers of the House of Lords in regard to the various types of legislation, the effect of the Parliament Acts, the rights and privileges of the Commons in connection with finance and the extent of the powers of the Lords thereon.

[1] The Separate Representation of Voters' Act.

Other constitutional movements treated in this Volume are those which have occurred in the Isle of Man during 1944-51; the Australian Banking Legislation and the Double Dissolution; the proposed Federation of the Rhodesias and Nyasaland with references under Editorial to the suggested constitution of a Second Chamber in Southern Rhodesia.

The great constitutional advances in our West African Colonies are given in four Articles dealing respectively with The Gambia, the Gold Coast, Nigeria and Sierra Leone.

Constitutional movements contained in this Editorial are: a further amendment of the British North America Acts of Canada; the Communist Bill in Australia; Suppression of Communism in South Africa; the Representation of Natives Act 1936; the amendment of the constitution of South-West Africa; the introduction of "Ministerial Members in the Federation of Malaya; the Constitution (First Amendment) Act in India; the most recent information in regard to the completion of the constitution for Pakistan and changes in several of the Crown Colonies, operating in the direction of reduced official control and increased non-European representation.

With reference to Parliamentary Procedure there are: Articles on the changes in the Standing Orders of the House of Commons 1947-48; the ever-welcome Article on the Precedents and Unusual Points of Procedure in the Union House of Assembly and the Rulings of the Speaker and his Deputy at Westminster are brought up to 1950-51.

Many valuable examples of the application of Parliamentary Procedure in the Parliaments at Westminster, Ottawa, the Australian States, South Africa, India, Pakistan and Northern Rhodesia are given under Editorial.

Privilege is also accorded its usual Article.

Among the matters more closely affecting a House of Parliament as a whole, the most prominent is that of "The Mudgal Case" at New Delhi which raised the question of what Parliament expects in the conduct of its members, particularly to be noted are the principles which a lady member of the Committee of Inquiry—Shrimati Durgabai—suggested should be a sound guide to Parliaments in dealing with the subject (*vide* Note attached to the Report).

Some striking instances are also given under Editorial as to the allocation of the functions of Ministers and Parliamentary Secretaries (Under Ministers) at Westminster.

Overseas, the tendency to increase the salaries of Ministers and members continues, those brought into force in New Zealand being the subject of a Report from a Royal Commission.

Our record as to the history and duties of the office of Black Rod in the Lords and of the Serjeant at Arms in the Commons is now made complete by a further Article.

Interesting accounts are given of the presentation on behalf of the

House of Commons of a Speaker's Chair to the Parliament of New Zealand and a Mace to the Commonwealth Parliament, at the hands of a visiting Parliamentary Mission.

The treatment by Committees of Parliament of delegated legislation in the House of Commons, Northern Ireland and South Australia is another *Questionnaire* subject kept up to date from year to year—as well as Expressions in Parliament, allowed and disallowed, and other subjects of Parliamentary interest.

But enough has been said upon a general survey of the matters dealt with in this Volume. "He that runs may read."

As this is the last Volume of the JOURNAL "we" shall edit and in view also of the relinquishment of the post of Honorary Secretary-Treasurer of the Society, the present holder of the above-mentioned offices takes leave of his duties in a message of farewell to which no further reference is needed here.

John George Jearey, O.B.E.,[1] formerly Clerk of the Legislative Assembly of Southern Rhodesia, died at Salisbury June 6, 1952. He had a distinguished career as an officer of Parliament and a Civil Servant.

Born in Cape Town in 1877, he joined the Cape Civil Service and worked in the office of Mr. William Milton when Mr. Cecil Rhodes was Prime Minister of Cape Colony. Mr. Rhodes persuaded Mr. Milton to come to Southern Rhodesia as Administrator and, after a short interval, Mr. Jeary followed him, arriving in Rhodesia in 1897. He joined the staff of the Administrator's office and remained in it until the grant of Responsible Government to Southern Rhodesia in 1923, when he became Secretary to the first Prime Minister of the Colony.

Mr. Jearey was Clerk Assistant to the Legislative Council for some years and was promoted to the office of Clerk of the House when the Legislative Assembly was constituted. He remained in that post until he retired in 1936. The Prime Minister paid tribute in the House to the outstanding quality of Mr. Jearey's services as Clerk of the House.

Mr. Jearey was interested in various branches of sport. He represented Southern Rhodesia at the English Bisley in 1909. He was a member of the Southern Rhodesia Volunteers and served in France in the 1914-18 War.

He was awarded the O.B.E. (Civil Division) for his distinguished services to the Colony.

Mr. Jearey was a Foundation Member of our Society and co-operated very whole-heartedly in its JOURNAL and

[1] *See also* JOURNAL, Vols. I. 134; IV. 37; V. 12.

other activities. We should like to offer our deep sympathy with Mrs. Jearey and the other members of the family in their great bereavement.

E. C. Redman, J.P., formerly Clerk of the Legislative Council of South Australia. The South Australian Parliament lost a highly esteemed and valued officer by the death of Mr. E. C. Redman on January 19, 1952, following a long illness. After spending his early days in Western Australia, Mr. Redman enlisted and saw Active Service with the 48th Battalion, 1st A.I.F. from 1915-1919. He returned to the Western Australian goldfields and in 1925 to South Australia, where he joined the Public Service and later the staff of the Legislature. In 1925, he became Office Clerk, House of Assembly, and Clerk to the Joint House Committee. Mr. Redman's first appointment at the Table was as Clerk-Assistant and Serjeant-at-Arms of the Legislative Council in 1937; he succeeded the late Mr. E. H. Peake as Clerk of the Legislative Council in 1948.

In his earlier days, Mr. Redman figured prominently in sporting activities, notably lacrosse and cricket. He was a foundation member of the Adelaide Legacy Club and Editor of the Club's bulletin for a record number of years. He was a prominent member of the Masonic Lodge.[1]

Although Mr. Redman only joined our Society a few years ago, he was an ardent supporter of its JOURNAL and general objects.

We should like to associate ourselves with all those who mourn the passing of a good Parliamentarian and a brave soldier.

C. T. du Toit, M.A., LL.B., B.Ed.[2]—On March 31, 1952, Mr. du Toit retired from the service of the Union House of Assembly owing to ill-health. He joined the staff as Translator in 1930 and was promoted to Chief Translator in 1940. In 1946 he was appointed Second Clerk-Assistant and was promoted to Clerk-Assistant in 1950.

Mr. du Toit had been an ardent member of our Society, which he joined upon his appointment to the Table in 1946, and we wish him speedy restoration to health and a happy retirement.

Acknowledgments to Contributors.—We have pleasure in acknowledging Articles in this Volume from: Mr. A. P. D. Smyth, Senio Clerk, House of Lords; Mr. E. A. Fellowes, C.B., M.C., Clerk

[1] Contributed by the Clerk of the Legislative Council.—[ED.]
[2] *See also* JOURNAL, Vol. XIV. 280.

Assistant of the House of Commons; Mr. George Phillips Coldstream, C.B., Deputy Clerk of the Crown in Chancery; Mr. Henry Burrows, Principal Clerk of Public Bills, House of Lords; Mr. M. T. Ryle, an Assistant Clerk to the House of Commons; Mr. D. A. M. Pring, M.C., Senior Clerk of the House of Commons; Major-General I. T. P. Hughes, C.B., etc., Deputy Serjeant-at-Arms, House of Commons; Mr. John Edwards, J.P., and Mr. F. C. Green, M.C., respectively Clerk of the Senate and Clerk of the House of Representatives of the Commonwealth of Australia; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the Commonwealth House of Representatives; Mr. H. N. Dollimore, LL.B., and Mr. E. A. Roussell, LL.B., respectively Clerk and Clerk-Assistant of the New Zealand House of Representatives; Mr. Denis Victor Cowen, B.A., LL.B., Professor of Comparative Law in the University of Cape Town, etc.; Mr. W. T. Wood, B.A., LL.B., J.P., and Mr. J. M. Hugo, B.A., LL.B., J.P., respectively Clerk of the Senate and Clerk of the House of Assembly of the Union of South Africa, in addition to which we are indebted to Mr. Hugo for a second Article; Mr. Erskine Grant-Dalton, M.A.(Oxon.), Second Clerk-Assistant of the Legislative Assembly of Southern Rhodesia; and Mr. S. L. Shakdher, Officer on Special Duty, of the Parliament Secretariat of India.

For Editorial paragraphs we are indebted to: Sir Robert Overbury, K.C.B., Clerk of the Parliaments; Sir Frederic Metcalfe, K.C.B., Clerk of the House of Commons; Major Geo. Thomson, C.B.E., D.S.O., M.A.(Bel.), Clerk of the Parliaments of Northern Ireland; Mr. F. de L. Bois, the Greffier of the States of Jeresey; Mr. James E. Le Page, H.M. Greffier of the Royal Court and of the States of Deliberation of Guernsey; Mr. P. W. Radice, B.A.(Oxon.), Greffier of the States of Deliberation of Alderney; Mr. Léon J. Raymond, O.B.E., B.A., Clerk of the House of Commons of Canada; Mr. Geo. Stephen, M.A., Clerk of the Legislative Assembly of Saskatchewan; Mr. E. K. DeBeck, Clerk of the Legislative Assembly of British Columbia; Mr. Henry H. Cummings, LL.D., Clerk of the House of Assembly of Newfoundland; Mr. C. Prudhomme, Clerk of the Legislative Assembly of Manitoba; Mr. John Edwards, J.P., and Mr. F. C. Green, M.C., respectively Clerk of the Senate and Clerk of the House of Representatives of the Commonwealth; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the Commonwealth House of Representatives; Mr. H. Robbins, M.C., Clerk of the Legislative Assembly of New South Wales; Captain F. L. Parker, F.R.G.S.A., Clerk of the Parliaments and Clerk of the House of Assembly, South Australia; Mr. W. T. Wood, B.A., LL.B., J.P., and Mr. J. M. Hugo, B.A., LL.B., J.P., respectively Clerk of the Senate and Clerk of the House of Assembly, Union of South Africa; Mr M. N. Kaul, M.A.(Cantab.), Secretary of the Parliament of India; S. K. Sheode, B.A., LL.B., J.P.,

Secretary, Legislative Department, Bombay; Mr. R. N. Prasad, M.A., B.L., Secretary of the Legislative Assembly, Bihar; Mr. M. B. Ahmad, M.A.(Aligarh), LL.M.(Cantab.), Secretary of the Constituent Assembly, Pakistan; Mr. S. A. E. Hussain, B.A., B.L., Secretary of the East Bengal Legislative Assembly; Colonel G. E. Wells, O.B.E., E.D., Clerk of the Legislative Assembly of Southern Rhodesia; Mr. I. Crum Ewing, Clerk of the Legislative Council of British Guiana; Mr. W. R. L. Addison, Clerk of the Central Legislative Assembly of the East Africa High Commission; Mr. J. H. Butter, Clerk of the Legislative Council, Kenya; Raja Ayoub, Clerk of the Councils, Federation of Malaya; Mr. L. Rex Moutou, Acting Clerk of the Legislative Council, Mauritius; Mr. K. J. Knaggs, Clerk of the Legislative Council, Northern Rhodesia and Mr. I. H. Norton, Clerk of the Legislative Council, Tanganyika.

Particularly should we appreciate being allowed to mention the ready and willing assistance rendered by Mr. T. Roos, B.A., the Librarian, and his Assistants, Mr. D. E. Mullany and Mr. J. C. Quinton, of the Library of the Union Parliament at Cape Town, where most of our reference work is carried out.

Lastly, we are grateful to *all* members for the valuable and interesting matter which they have sent in, from which Articles and Editorial paragraphs have been drawn up, as well as for the co-operation they have so willingly and generously given.

Questionnaire for Volume XX.—As there were so many other *Questionnaire* subjects for earlier Volumes standing over for want of space, a repeated item, "M.P.s and Personal Pecuniary Interest", was included in Volume XIX.

In regard to the other items in this *Questionnaire*, information has been already assembled in respect of "Censure of Chair" (VI, XX); "Tampering with Witnesses" (V, XX); "Administration of Oath by Clerk" (IV, XX); and "Suspension of Standing Orders" (V, XX), as well as the following Article items in earlier *Questionnaires*: "Strangers addressing Parliament" (XX); "Press Representatives & Parliaments" (XVII); "Ministers & Directorships" (XV, XVI); "*Sub judice*" (XVII); "Parliamentary Secretaries (Under Ministers)" (already typewritten) (VIII, IX, XIV, XV); "Method of Legislation for Regulation of Public Professions" (already typewritten) (XVII); "Unusual Dissolutions" (VIII, XX); and "Election of Speaker" (XVIII).

Supplementary Questionnaire for Volume XX.—The items "Protests" (already typewritten) (XX) and the repeated item "Unusual Dissolutions" (VIII, XX) are also standing over for insertion in the JOURNAL as space is available after current subjects have been dealt with.

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

C.M.G.—E. A. Fellowes, C.B., M.C., Clerk-Assistant of the House of Commons.

C.B.E.—Major Geo. T. Thomson, D.S.O., M.A.(Bel.), Clerk of the Parliaments, Northern Ireland.

O.B.E.—M. F. A. Keen, B.A., Clerk of the Legislative Assembly of the Sudan.

M.B.E.—R. St. L. P. Deraniyagala, B.A., Clerk of the House of Representatives, Ceylon.

M.B.E.—L. W. Donough, Clerk of the Legislative Council, Singapore.

United Kingdom (Ministry of Materials Act, 1951.[1]—In moving 2 *R.* of the Bill in the House of Commons on June 27,[2] the Lord Privy Seal (Rt. Hon. R. R. Stokes) said that the Bill, the White Paper, and the 2 Orders explained what was before the House.[3]

The Government's power to trade was derived from the Ministry of Supply Act, 1939.[4] The Order printed in the White Paper transferred the functions indicated therein to the new Department created under the Bill, which was designed to provide the utmost flexibility so that duties could be added or subtracted as might prove advisable as time went on.

Mr. Stokes said that he had been most anxious to consult, as far as possible, the main people affected by these changes. The intention of the Bill, as far as practicable, was that all raw material questions should be dealt with in one place instead of in several, but more particularly that a responsible Minister with time at his disposal, undistracted, should focus attention on raw material supplies. The Bill would be a big step towards a long-term solution of a very urgent problem.[5]

The second most urgent problem was the question of having some single control in dealing with the commodity price level.[6]

It was not their intention to set up another huge staff of people of whom industry had never heard of before but to transfer certain staffs from the Board of Trade and the Ministry of Supply to the new Department.[7]

The Ministry of Materials would be responsible for the general policy of the procurement of both the raw materials, which included formulating and carrying out policy in the international field.[8]

The Government had come to the conclusion that the only satisfactory arrangement in the case of iron and steel was that one Department should be responsible for the industry as a whole and that any attempt to distinguish between the basic raw materials and iron and steel at different stages of fabrication would be artificial.

[1] 14 & 15 Geo. VI. c. 42; *see also* JOURNAL, Vol. XV. 18. [2] 489 *Com. Hans.* 5, s. 1395. [3] For reference to *see below*.—[ED.] [4] 2 & 3 Geo. VI. c. 38. [5] 489 *Com. Hans.* 5, s. 1396. [6] *Ib.* 1397. [7] *Ib.* 1398. [8] *Ib.* 1401.

The Government had, therefore, thought it best to make no fresh changes in the responsibility.[1]

It was the new Minister's duty to ensure regular and sufficient supplies whether on public or private account both for the short and long-term requirements of industry as a whole.[2] He would have to see that there was economy in the use of all these materials while, at the same time, it would continue to be the individual responsibility of the production Department to see that there was no waste or abuse by the consumers. It would be the Minister's responsibility to look after both Home and Overseas development so far as they affected material under his Department and to give help where necessary.[3]

After considerable debate[4] the Bill passed 2 *R.* (Ayes, 296; Noes, 277).

The House then went into *C.W.H.* to pass the necessary Financial Resolution for the provision of the salary, etc., for the new Minister and the Parliamentary Secretary, which Resolution was put and agreed to, passed, reported to the House and agreed to.[5]

The House forthwith went into *C.W.H.* on the Bill itself from which the Bill was reported without amendment, passed 3 *R.*,[6] was transmitted to the Lords and agreed to. *R.A.* was announced on July 3,[7] the Bill duly becoming 14 & 15 Geo. VI c. 42.

In view of the importance of the Ministerial powers conferred under the Bill and of their useful reference for Overseas Governments, it is proposed to give a brief outline of the White Paper and the 2 Orders referred to by the Minister at the opening of his speech on the 2 *R.* debate.

The White Paper (*Cmd.* 8278).—This Memorandum presented to Parliament on June 15, 1951, followed an announcement by the Prime Minister that it had been decided to set up a new Department under the Lord Privy Seal to deal with raw materials. The Memorandum describes the functions to be assigned to him and explains the Bill, the proposed Orders-in-Council under the Ministers of the Crown (Transfer of Functions) Act, 1946,[8] and the Supplies and Services (Transitional Powers) Act, 1945,[9] as extended, from which the necessary statutory powers will be derived.

Duties of the Minister.—It will be the duty of the Minister of Materials to do everything possible to ensure adequate supply of the materials with which he is concerned and where they are dealt with on public account, he will be responsible for their purchase and sale. Where appropriate, he will take steps to increase the production of materials of which supplies are, or may become, inadequate, to promote their economical use, salvage and recovery and to develop the production and use of substitutes.

[1] *Ib.* 1402. [2] *Ib.* 1404. [3] *Ib.* 1406. [4] *Ib.* 1407-1518. [5] *Ib.* 1529. [6] *Ib.* 1530-39. [7] *Ib.* 2200. [8] *See* JOURNAL, Vol. XV. 18. [9] 9 & 10 Geo. VI. c. 10 and S.R. & O. 1945 (Nos. 1611, 1616, 1618).

Unless in a particular instance the public interest would be better served by some other arrangement, the Minister should be responsible for raw materials up to the point at which they enter the manufacturing industry. Each case would have to be considered individually to decide the most advantageous arrangement. This explains why, with different commodities, the line has been drawn at different stages of processing and why, in some cases, the Board of Trade and the Ministry of Supply retain their present responsibilities.

The Minister is given responsibilities for particular materials. For instance, he takes over the responsibilities of the Minister of Supply for the supply of non-ferrous and light metals in unwrought form, but the Minister of Supply remains responsible for the iron and steel industry as a whole, as well as for other raw materials of such industry.

The Minister of Materials also takes over chemicals, leather, paper, rubber, cotton, wool, etc., jute and jute goods, other textiles, timber as well as other scheduled materials, from the Board of Trade and Ministry of Supply.

In regard to distribution, the broad allocations of materials among the various classes of users will be decided through the inter-Departmental arrangements which have existed for the purpose since 1939 and for which the Chancellor of the Exchequer is responsible as part of his function of co-ordinating economic policy. Detailed allocations to individual firms within these broad allocations will be determined by or on the advice of the Departments concerned.

Statutory Powers.—Paragraphs 18 to 20 of the White Paper read:

18. The Minister of Materials will derive the statutory powers necessary for the exercise of his functions from the Ministry of Materials Bill, an Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946, and an Order in Council amending the Defence (General) Regulations. Drafts of the proposed Orders in Council are annexed.

19. The Bill provides for the appointment of a Minister of Materials and the exercise by him of such functions relating to raw and other materials as may be transferred or assigned to him. It also adds him as a Minister competent to act under Section 1 of the Statistics of Trade Act, 1947 (which enables certain Ministers to obtain statistical information from a person carrying on an undertaking), the Industrial Organization and Development Act, 1947 (which provides for the establishment of Development Councils and related matters) and Section 10 of the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948 (which empowers certain Ministers to make orders where the Monopolies and Restrictive Practices Commission have made a report).

20. The Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946, will transfer to the Minister (*a*) the powers of the Minister of Supply under Section 2 of the Ministry of Supply Act, 1939, as amended by the Supplies and Services (Transitional Powers) Act, 1945, and the Supplies and Services (Defence Purposes) Act, 1951, to manufacture and trade in the metals and other materials set out in the First Schedule to the Order; (*b*) similar powers of the Board of Trade, transferred to the Board from the Minister of Supply in 1946, in relation to the materials set out in the

Second Schedule; (*c*) the powers of the Ministry of Supply relating to payments for creation of reserves, under Section 4 of the Ministry of Supply Act, 1939, as far as the transferred commodities are concerned; and (*d*) except in the respects mentioned in paragraph 11 above, the functions of the Board of Trade under the Cotton (Centralized Buying) Act, 1947, which set up the Raw Cotton Commission for centralized buying, selling and distribution of raw cotton. This Order in Council will also make available to him, for the purposes of his functions, the powers relating to the acquisition of land which are exercisable by the Minister of Supply and the Board of Trade.

Annex I gives a draft of the Transfer of Functions (Various Materials) Order, 1951, and the 2 Schedules thereto, give a list of materials in respect of which functions are transferred to the Minister of Materials from the Minister of Supply and the Board of Trade respectively.

Annex II contains a draft of the Defence Regulation (No. 4) Order, 1951.

Statutory Instruments.—Further authorities in connection with the creation of a Ministry of Materials are:

(*a*) S.I., 1951, No. 1244: Supplies and Services: Raw Materials and semi-manufactured and manufactured articles. The Board of Trade and Minister of Materials (Various Controls) Order, 1951.

(*b*) S.I., 1951, No. 1245: Supplies and Services: Minister of Materials' Control Orders (Exemptions) Order, 1951.

(*c*) S.I., 1951, No. 1246: Supplies and Services: Raw Materials (Light and Non-Ferrous Metals). The Minister of Supply Control Orders (Minister of Materials' Transactions) Order, 1951.

United Kingdom (Ministers of the Crown—Parliamentary Under-Secretaries).[1]—On November 22,[2] a Bill was introduced into the House of Commons to amend certain provisions of the Ministers of the Crown Act, 1937, relating to Parliamentary Under-Secretaries, and in moving 2 *R.* of the Bill on the 29th *idem*[3] the Home Secretary (Rt. Hon. Sir David Maxwell Fyfe) said that the purpose of the Bill was to appoint an additional Under-Secretary at the Home Office and the Scottish Office. In order to obtain the representation of Wales at the highest level the Prime Minister had announced in the House on the 13th instant[4] that the functions of the Home Secretary would be:

> to inform himself of the Welsh aspect of business by visiting the Principality and by discussion with representatives of Welsh life and to speak in Cabinet on behalf of the special interests and aspirations of Wales. He will be assisted by a Welsh Under-Secretary. It is not proposed to confer executive power on the Home Secretary as Minister of Welsh Affairs and he will have no direct responsibility to Parliament for education, health or agriculture in Wales, or for the administration in Wales on any services for which other Ministers are departmentally responsible.

The Home Secretary then referred to the "Scottish Control of Scottish Affairs" document issued in 1949, which emphasized the

[1] *See also* JOURNAL, Vols. V. 19; VI. 12, 17; VIII. 11; XI-XII. 19; XV. 18, 21; XVI. 15; XVII. 10. [2] 494 *Com. Hans.* 5, s. 576. [3] *Ib.* 1739. [4] 493 *ib.* 815.

yearly increase in the responsibility of the Secretary of State for Scotland. It was therefore proposed under the Bill to appoint a Minister of State for Scotland as Deputy to the Secretary of State and provide for the salaries of these 2 additional Parliamentary Under-Secretaries.

The Home Secretary then quoted the Ministers of the Crown Act, 1937,[1] the Ministry of Supply Act, 1939,[2] the Ministry of Fuel & Power Act, 1945,[3] the Ministers of the Crown (Treasury Secretaries) Act, 1947,[4] and the Defence (Parliamentary Under-Secretaries) Regulations, 1940.

Clause 1 of the Bill fixes the number of Under-Secretaries at the Scottish Office at 3, in the Home Office and Ministry of Agriculture at 2, and the abolition of the additional posts authorized by the Defence Regulations for Service Departments and the Ministry of Labour, making the total potential number now by Statute 27, of which 22 will be able to sit in the Commons.

Sub-section (3) removes the India and Burma Offices from the List of Departments.

Debate continued[5] and the Bill having passed 2 *R.*, was committed to a Standing Committee. On November 29,[6] the King's Recommendation was signified and the Resolution authorizing the payment of £1,500 *p.a.* to the additional Under-Secretaries under the Bill was considered in *C.W.H.* under S.O. 84 (Money Committees) and reported on December 3,[7] after which the Bill was again considered in *C.W.H.*, reported without amendment[8] and passed 3 *R.*,[9] sent to the Lords, agreed to without amendment, received *R.A.*[10] and duly became 15 Geo. VI. c. 9.

United Kingdom (Consolidation of Enactments).[11]—On November 7,[12] the Lords again originated the setting up of a Joint Committee of the House of Lords and of the House of Commons with the same Order of Reference and following the same procedure as was given in detail in the last issue of the JOURNAL.

Bills dealing with Dangerous Drugs (after its forerunner The Dangerous Drugs (Amendment) Bill; Midwives; Midwives (Scotland); and Nurses (Scotland) were laid before the Joint Committee and, with the exception of an amendment to the Midwives Bill, were formally passed by both Houses as recommended from the Joint Committee, and duly became law.

The personnel of the Joint Committee was as follows:

Lords.	*Commons.*
M. Reading*	Captain Duncan
E. Selkirk†	Mr. Forman

* K.C. † Advocate.

[1] 1 Edw. VIII & 1 Geo. VI. c. 38. [2] 2 & 3 Geo. VI. c. 38. [3] 8 & 9 Geo. VI. c. 19. [4] 11 & 12 Geo. VI. c. 5. [5] 494 *Com. Hans.* 5. ss. 1743-1790. [6] *Ib.* 1791. [7] *Ib.* 2043-2067. [8] *Ib.* 2043. [9] *Ib.* 2067-2072. [10] *Ib.* 2724. [11] *See also* JOURNAL, Vol. XIX. 23. [12] 169 *Lords Hans.* 5. s. 4.

Lords (*cont.*).	*Commons* (*cont.*).
L. Fairfax of Cameron	Mr. Geoffrey Hutchinson‡
L. Rathcreedan(‡)§	Mr. Janner§
L. Belstead‡	Mr. Keeling‡
L. Schuster*	Mr. Oliver‡

* K.C. ‡ Barrister-at-Law. § Solicitor.

House of Lords (The Negative Vote).[1]—On March 20,[2] after the Motion for the consideration of the First Report[3] from the Select Committee on Procedure of the House had been agreed to, the Chairman of Committees (Rt. Hon. the Earl of Drogheda) referred to an incident which had occurred more than a year ago on a division during the Committee stage of a Bill with a majority of one, which led to an inquiry as to what would have been the result had the votes been equal, the answer to which was doubtful. As no one in their Lordships' House had a casting vote, one was left to seek written authority and guidance from precedents.

The only written authority was that in the *Companion to the Standing Orders*,[4] namely:

> If the Contents and Not-Contents are equal, the Question is, according to the Ancient Rule of Law "*semper præsumitur pro negante*" resolved in the Negative

—but 2 different results might be obtained, according to whether the Chairman said: "The Question is that the Clause be omitted," or "The Question is that the Clause stand part of the Bill". The precedents were themselves contradictory and no one could quite tell what the result would be on any given occasion.

The Committee felt that though it was a point that seldom arose it was important that some Rule should be laid down.

The suggestion is that when there is an equality of votes:

(*Here follows paragraph one of the Standing Order set out below.*)

That would mean, continued the noble Earl, if a Lords Bill was amended in "another place" and then came to this House, that unless there was a majority in favour of the alteration of the Bill, the amendment would remain.

Similarly, if on a Motion to go into *C.W.H.* on a Bill the voting was equal, the House would go into Committee.

But as regards all other matters their Lordships would be governed by the principle that has obtained hitherto, in theory at least; that the Question before the House shall be decided in the negative unless there is a majority in favour.

The Committee in their Report therefore recommends that, in view of the obscurity of the existing Rule of "*semper præsumitur pro*

[1] Before reading this Editorial Note reference should be made to the Article on this subject in Vol. IV of the JOURNAL at p. 46, by the then Clerk of the Parliaments (Sir Henry Badeley, the late Lord Badeley) showing the history and practice of this Ancient Rule of Law.—[ED.]

[2] 170 *Lords Hans.* 5, s. 1175.

[3] H.L. (32).

[4] *See* Article XXVII hereof.

negante" and of the variety of interpretation that has been placed upon it, the following Standing Order be adopted by the House to govern the procedure on an equality of votes.

The noble Earl then moved:

That the Standing Orders be amended by the insertion of the Standing Order proposed in the Report of the Select Committee as follows:

Equality of votes on a Division.—In relation to Bills and subordinate legislation the practice of the House is governed by the principle that no proposal to reject or amend a Bill or instrument in the form in which it is then before the House shall be agreed to unless there is a majority in favour of such rejection or amendment.

Similarly no proposal to reject or amend any motion relating to the stages of a Bill shall be agreed to unless there is a majority in favour of such rejection or amendment.

In relation to all other matters the practice of the House is governed by the principle that the question before the House shall be decided in the negative unless there is a majority in its favour.

On Question, the Motion was agreed to, and Ordered accordingly.

House of Commons (Ministers: Transfer of Functions).—On February 23[1] on the Prayer:

That an humble Address be presented to His Majesty, praying that the Order in Council dated 29th January, 1951, enabled the Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order 1951 (S.I., 1951, No. 142) a copy of which was laid before this House on 29th January be annulled.

The mover, the hon. and gallant member for Glasgow, Kelvin Grove, said that they had to speak to-night under the conditions of a Prayer, but it covered a very wide field and he asked Mr. Speaker whether it would be possible for him to give any Ruling as to the extent to which the debate might run?

Mr. Speaker said:

I am the servant of the House and I must see that the rules of the House are obeyed. A debate on a Statutory Instrument or on a Motion to annul it, commonly called a Prayer, is limited strictly to the contents of the Instrument. It is not permissible to suggest or to discuss alternative ways by which the objects of the Instrument might have been achieved. I know perfectly well that there has been some desire to discuss whether it was constitutional to change these functions by an order and not by an Act of Parliament, but that, of course, is clearly, absolutely out of order on a Prayer, and I could not possibly allow discussion on that subject.

House of Commons (Questions to Ministers on Nationalized Industries).—On November 27, 1950,[2] Q. was asked if it was now the policy of H.M. Government that Ministers should answer Parliamentary Questions on matters of general policy affecting the nationalized industries with which they are concerned.

The Lord President of the Council (Rt. Hon. Herbert Morrison) said that there had been no change in the position in this respect and,

[1] 484 *Com. Hans.* 5, s. 1537. [2] 481 *Com. Hans.* 5, s. 781.

as was shown in recent debate, the practice which had been followed had the general approval of the House. Ministers would only answer Questions on matters for which they assume responsibility, except to the extent that Questions are covered by Mr. Speaker's Ruling of June 7, 1948.[1] Even then, it remained with the Minister to decide whether to answer any Q. which had been allowed as being of "public importance". For an indication of the wide range of subjects on which Ministers will answer Qs., in connection with the socialized industries, Mr. Morrison referred the Questioner to his answer of April 5 last to the hon. members for Fife East and Maidstone.

House of Commons (Ministers' Official Residences).[2]—On November 6, 1950,[3] in reply to a Q.—what Ministers are now provided with official residences—the Prime Minister (Rt. Hon. C. R. Attlee) said that rent-free official residences are provided for the Prime Minister, the Secretary of State for Foreign Affairs, the Chancellor of the Exchequer (who is at present occupying it), the Lord Chancellor (as Speaker of the House of Lords) and the First Lord of the Admiralty. The Chancellor of the Duchy of Lancaster and the Minister of Transport have residential accommodation in official premises for which they pay rent.

The Questioner then asked if a certain measure of official accommodation is provided for the Ministers without having complete flats. The Prime Minister replied that there were cases where lavatory and washing accommodation is supplied and cases where a Minister has a bed, in which, if he is kept late, he can sleep. Nothing else in the way of residence is provided.

House of Commons (Free Facilities to Ministers).[4]—On February 27[5] the reasons were asked why the number of official cars had increased from 1 in 1938 to 35 in 1950.

Cars.—The reply was the Coalition Government decided in 1943 that each senior Minister should have an official car, on the ground that the pressure of public business made it wasteful of time and effort that Ministers should not be provided with motor transport and subsequent Governments had endorsed that decision.

In reply to a Q., on March 20,[6] the Financial Secretary to the Treasury said that 18 Ministers had the use of an official car and driver. The average monthly mileage of each car was about 830 miles in 1949 and 800 in 1950. The average total monthly sum paid by these Ministers in respect of private journeys was about £18 in 1949 and £16 in 1950.

Among several other Qs. put relative to this subject was one on July 16,[7] asking the Financial Secretary to the Treasury if he could

[1] *See* JOURNAL, Vol. XVIII. 133. [2] *See also* JOURNAL, Vol. XVIII. 32.
[3] 480 *Com. Hans.* 5. s. 589.
[4] *See also* JOURNAL, Vols. V. 18; VI. 12; XIII. 13; XV. 21; XVIII. 31.
[5] 484 *Com. Hans.* 5. s. 1914. [6] 485 *Ib.* 2303 [7] 490 *ib.* 90.

arrange that all Government-provided cars should carry a special plate or badge in a conspicuous position, so that the public could distinguish them from private cars. The reply was that all official cars displayed a certificate of Crown ownership and that he did not think a special badge was necessary.

House of Commons: Selection of Amendments (Reflection on the Chairman).—An interesting instance of the Privilege of the House of Commons in regard to public money occurred in the 1950-51 Session.

On June 5,[1] when the House was in *C.W.H.*, on the Finance Bill and Clause 1 (hydro-carbon oils, petrol substitutes and power methylated spirits) was about to be considered, the Chairman stated that he would have to Rule the first amendment to omit sub-clause 1 out of order, such sub-section being really the only effective sub-clause. He therefore did not propose to select any of the other amendments to this Clause and invited hon. members to make the points they wished to make, on the Question—"That the Clause stand part of the Bill."

To this, the hon. member for Gainsborough (Captain the Rt. Hon. H. F. C. Crookshank) took exception because the amendments raised specific and quite different points. The hon. member went on to say that in regard to the sub-section (1) Ruled out, he took it that the Chairman was relying on May,[2] namely, that if a sub-section is a material part of the Clause it cannot be debated separately, as without that sub-section the Clause would not make sense. That Ruling had stood the test of time for a long while, but in November, 1947, the House altered S.O. 86[3] to the effect that there was no debate now on any Budget Resolution separately, the general debate on the last Resolution covering the whole field and speeches followed each other on different topics. They used to have that on the Report stage, but such was now gone. When such procedure was in force, it was possible to put down specific amendments and get even more debate than is permissible now.

The rt. hon. and gallant member further observed that, notwithstanding the Ruling now given he would reserve his right on some future occasion to see whether this sort of detailed debate was more effective on the Committee stage of the Bill, in view of the abolition of the Report stage of the Resolutions.

The Chairman,[4] however, adhered to his Ruling, while at the same time acknowledging that there was something in what the rt. hon. and gallant gentleman had said, to which he would give his long consideration, but that the hon. member could not make representation to the Chair on the selection of amendments.

After long debate[5] on the Clause, the Closure was put (Ayes, 299; Noes, 289) and the Clause was agreed to (Ayes, 304; Noes, 286).

[1] 488 *Com. Hans.* 5, s. 811. [2] XV. 534. [3] *See* JOURNAL, Vols. XVI. 142; XVII. 187. [4] 488 *Com. Hans.* 5, s. 813. [5] *Ib.* 898.

The following Motion of censure was then put on the *O.P.* in the names of the Leader of the Opposition and others:

That this House views with concern the decision of the Chairman of Ways and Means so to exercise his powers of selection as to exclude Amendments to Clause 1 of the Finance Bill, which would have permitted the House to debate and pronounce upon specific burdens imposed upon individuals and industries.

—and referred to by the Home Secretary on June 14,[1] when discussing the arrangement of the Business of the House.

On June 19,[2] the Leader of the Opposition (Rt. Hon. Winston Churchill) asked the Leader of the House (Rt. Hon. J. C. Ede) when the Motion standing on the *O.P.* in his name and the names of his rt. hon. friends on the Front Opposition Bench would come under consideration, to which the Leader of the House made an assuring reply.

On June 21,[3] the Motion was moved by Captain Crookshank who, while fully respecting the Ruling of the Chairman, urged that it raised a serious constitutional issue and then moved his Motion to clear the matter up. He felt that the Ruling was wrong in the light of the duty imposed on them to debate matters of fresh taxation and that the Chairman should give them that opportunity not afforded them on the day in question when he overlooked both his and their constitutional duty. They did not censure the Chairman but merely expressed their concern on the way the decision was reached. This Ruling was also diametrically opposed to the Ruling the Chairman gave last year when amendments were selected, debated and divided upon.

The rt. hon. and gallant member quoted the view of another hon. member who asked[4] whether the whole of this intricate law of procedure about their financial processes was not designed to make sure that no charge should either be put or kept upon the public without annual challenge.

May stated[5] that the most important power vested in any branch of the Legislature is the right of imposing taxes and of voting money for the exigencies of the public service. The exercise of this right by the Commons is practically a law for the annual meeting of Parliament in the redress of grievances.

If they did not cling to that they would eventually become merely the rubber stamp of the Executive.

It was because they thought that the Chairman had made an error in judgment in this instance that they sought to clarify the general position.

The Leader of the Opposition, interjecting[6] another speaker, said that no one had challenged the *bona fides* of the Chairman. They challenged his judgment.

The Leader of the House[7] said that it was undoubtedly a tre-

[1] *Ib.* 2521. [2] 489 *ib.* 243. [3] *Ib.* 721-8. [4] 488 *Com. Hans.* 5, s. 822.
[5] XV. 39. [6] 489 *Com. Hans.* 5, s. 729. [7] *Ib.* 730.

mendous power given to the occupant of the Chair to vest in him the right of selecting amendments, a power which arose in 1909 on the Finance Bill. In those days a Motion had to be moved and it was urged that it was better than either the Closure or the Guillotine and he was sure that of all the powers dealing with Parliamentary discussion, the Guillotine was quite the worst.[1]

Experience over 40 years had shown that this very drastic power of selection of amendments could be used in this democratic assembly with the approval, generally speaking, of all Parties in the House.

Mr. Ede made it quite clear that in all the discussions that take place about the selection of amendments the Government and its individual members took no part at all. They were not consulted by the Chair. It would be an effrontery on their part to do so.

The Chair had the advantage of being advised by those who are the servants of the House but the Chair is responsible for the action it takes on such advice.[2]

Mr. Ede considered that the Chairman had acted in good faith and he hoped that the Motion, the subject having been now ventilated, would be withdrawn.

The Leader of the Opposition said[3] that he thought it was a wrong decision on the part of the Chairman to sweep the amendments out of the way in that method. One might be unfairly treated just as much by an error of judgment as by want of good faith or malice. There was an error of judgment which resulted in what they considered unfair treatment of the Opposition in regard to important amendments on Clause 1. They were dealing with constitutional issues and there was no question of them withdrawing the Motion. If it was to be negatived, let it be done by the House. The Opposition had placed it on the Order Paper.

After a brief continuation of the debate, the Question was put and negatived, without division.[4]

House of Commons (Delegated Legislation).[5]—The Select Committee on Statutory Instruments was appointed in the 1950-51 Session[6] with the same Order of Reference and powers as in the 1950 Session.[7]

Motion for Leave: Parliamentary Control.—Before giving information as to the activities of this Select Committee, reference will be made to a Motion moved by the hon. member for East Croydon (Sir Herbert Williams) on February 21,[8] as follows:

That leave be given to bring in a Bill to amend the Statutory Instruments Act, 1946,[9] in order to render subject to Parliamentary control statutory instruments presented to Parliament which are neither subject to annulment in

[1] *Ib.* 731. [2] *Ib.* 734. [3] *Ib.* 739. [4] *Ib.* 746.
[5] *See also* JOURNAL, Vols. IX, 64; X. 25, 27, 83; XI-XII. 15; XIII. 160; XIV. 152; XV. 30; XVI. 33; XVII. 12; XVIII. 50, 54; 389 *Com. Hans.* 5, s. 1231, 1593-1692; and JOURNAL, Vol. XIX. 35. [6] 480 *Com. Hans.* 5, s. 715. [7] *See* JOURNAL, Vol. XIX. 35. [8] 384 *Com. Hans.* 5, s. 1291. [9] 9 & 10 Geo. VI. c. 36.

pursuance of a resolution of either House of Parliament nor required to be approved or confirmed by Parliament.

Sir Herbert Williams, after referring to a recommendation by the Select Committee on Procedure, 1946, that there should be a full examination, he thought, by a Joint Select Committee of both Houses,[1] said that a measure of delegated Legislation was necessary and had been going on, in varying forms for the past 400 years, with the result that the whole position was in a state of great confusion.

The object of the Bill was to diminish that confusion to a small extent. He was not attempting to deal with the whole subject, for that was a matter which would have to be handled by the Government. He was merely trying to provide that when an order was presented to Parliament, Parliament should be entitled to discuss it. At present, a number so introduced were not debatable. Legislation by decree was an evil thing when without some Parliamentary control and nearly half the orders published by H.M.S.O. were not debatable.

The hon. member then gave a number of examples. The other day an important order was published controlling the export of goods, upon which a Prayer was not admissible, whereas on an order on the control of exchange payments a Prayer was allowed. No Prayer was allowed upon an order about Teachers' Superannuation Rules, yet an order on Fire Services (Ranks and Conditions of Service) was prayable, although both belonged to orders dealing with people's remuneration.

Sir Herbert Williams then went on to quote many similar cases of contradiction showing that the position was in a state of absolute and complete confusion and said he considered that the time had come for the question to be investigated. His Bill merely sought to cover one small part—the least controversial part—that when an order was formally laid on the Table, hon. members should be entitled to take Parliamentary action by having a Prayer about it.[2]

The Bill, however, was opposed by the hon. member for Leicester, N.E. (Sir A. L. Ungoed-Thomas), who remarked that there were border-line cases, but that it was impossible to come to a conclusion about the Bill on the speech the hon. member for Croydon E. had made that day.

There were 4 categories of Statutory Instruments: those requiring an affirmative Resolution, those subject to a negative Resolution, those requiring to be laid before the House and those which did not require to be so laid.

The hon. member for Croydon E. wished to abolish the third category and transfer them to the second category. The difference between a Parliamentary decision by the present method and that proposed under the Bill was that Parliament now decided into which category a Statutory Instrument should fall when considering the

[1] *See* JOURNAL, Vol. XVI. 124. [2] 484 *Com. Hans.* 5, s. 1291-3.

Bill authorizing that Statutory Instrument instead of Parliament considering each individual case on its merits by debate in the House—as at present—when the House is fully seized of all the facts. Sir Ungoed-Thomas then quoted facts in support of his argument.

After these 2 speeches the Question was put and negatived (Ayes, 192; Noes, 248).[1]

Mr. Speaker's Ruling.—With reference to the following Motion which stood upon the *O.P.* for April 19:[2]

That an humble Address be presented to His Majesty, praying that the Order, dated 12th March, 1951, entitled The Utility Apparel (Maximum Prices and Charges) (Amendment No. 2) Order, 1951 (S.I., 1951, No. 413) a copy of which was laid before the House on 13th March, be annulled

—Mr. Speaker said that this was a question about a Prayer to be moved by the hon. member for Gillingham. Actually, continued Mr. Speaker, he was afraid he must rule that this Order was not in conformity with the Rules he had laid down. It added a new Third Schedule to No. 216 and revoked No. 296, which had already added two Schedules to No. 216. Therefore, it revoked two Schedules and added one. The two Schedules had been law for some time. It was quite impossible to add one Schedule—a child to a parent already dead. Under his Ruling of 3 weeks ago,[3] he thought this Order should be laid in proper form. Therefore, for the moment, no Prayer could possibly arise.

An hon. member interjected by saying: "If the Government immediately accepted your Ruling and declare so——"

Mr. Speaker: "The Government have got to accept my Ruling. I gave quite a definite Ruling. The Order is not in order. The matter remains there."

After further interjections, Mr. Speaker said that he came back to the Chair to-night because this was a very complicated matter. He had earnestly considered it and gave his Ruling in consequence. He thought it was better to be done by him than by Mr. Deputy Speaker.

During the Session there were 49 cases of annulment and Motions to annul and 30 of Approvals and Motions to approve, and among the Reports mention will now be made of the—

Special Report.[4]—As this Special Report from the Committee is particularly informative, its paragraphs 1 to 10 are given *verbatim*:

1. Your Committee have examined 715 Statutory Instruments since the beginning of the session and have drawn the special attention of the House to seventeen. Of the seventeen Instruments brought to the special attention of the House in the current session six were reported under the third head (unusual or unexpected use of powers) prescribed in Your Committee's Order of Reference, five under the fifth head (delay) and six under the sixth head (need of elucidation).

[1] *Ib.* 1293-6. [2] 486 *ib.* 2139-42. [3] *Ib.* 1660. In reply to a *Private Notice Q.* on April 9, 1951, Mr. Speaker ruled that S.I.'s and other Rules and Orders subject to annulment during a stated period cannot be accepted as "laid" unless presented complete and in full: i.e., no dummies will be accepted; *see also ib.* 205 and 487 *ib. 117, 118.* [4] H.C. 239 (1951).

Following the practice of former Sessions, Your Committee seek to supplement their *ad hoc* reports with a Special Report on a few general points encountered in the course of their examination.

2. *Delay*.—Instances of delay in publication and presentation are exceptional. Where, however, the parent Act requires an Instrument to be laid before Parliament, account has to be taken of the direction in Section 4 (2) (*b*) of the Statutory Instruments Act that the Instrument must show on its face the date of laying before Parliament. This direction naturally involves some delay in final publication, unless the Minister is confident that he can predict the date of laying with certainty. Moreover, as the practice of the House allows a copy of the Instrument to be presented in proof form with manuscript corrections and additions at the moment when the Instrument is laid, a final copy is not immediately available for members in the Vote Office. While this course shortens the interval between making and presentation, in effect it reduces the 40-day period during which a resolution may be moved inasmuch as prints for personal study cannot be obtained in the Vote Office at the beginning of that period.

In all the five cases reported to the House during the present Session the delay was attributed to the time taken in setting up in print the Related Schedules accompanying the Instruments.[1] Your Committee have suggested that the printing of these Schedules (which are not required to bear the date of laying) might be put in hand in advance; this, it seems, will in future be done.

3. *Date of Operation*.—Where the parent Act requires an Instrument to be laid before Parliament, there is another statutory requirement. Section 4 (2) (*a*) of the Statutory Instruments Act directs that every copy of the Instrument sold by the King's Printer " shall bear on the face thereof " a statement showing the date on which it came or will come into operation.

In some recent cases (S.I., 1951, Nos. 1157, 1160, 1196 and 1209) the date of operation is not shown in its usual place at the head of the Instrument, but instead there is a reference to some final Article of the Instrument. In two of these cases the Article specifies, as regards part of the Instrument, no date, but purports to empower the Minister to appoint a date. Your Committee express no opinion whether a Minister can authorize himself thus to defer the announcement of a date of operation, but they feel doubt whether these departures from the normal practice constitute a proper compliance with the statutory requirement. In Acts of Parliament " appointed day " clauses are familiar and doubtless inevitable, but the reasons for their use do not, in Your Committee's opinion, apply to subordinate legislation. A Minister who finds himself unable to decide when some prospective Instrument or part of an Instrument shall come into operation can postpone legislating until the decision can be made.

4. *Explanatory Notes*.—When studying the Explanatory Notes appended to Instruments, Your Committee continue to find evidence, as in previous Sessions, of the care, skill and indeed on occasions candour displayed in the endeavour to make them concise and helpful.

Instances are occasionally still noted (*e.g.*, S.I., 1951, No. 940) in which an Explanatory Note is unnecessary because it has nothing to add to the words in the text. This criticism, however, is not intended to discourage the practice of appending Explanatory Notes whereby it is possible to summarize what are often complicated and voluminous provisions of subordinate legislation. At the same time Your Committee realize that the Note (as is invariably stated) is no part of the Instrument; it is not legislation; it is a means to an end and not an end in itself. In this connection, they consider that more might sometimes be done to make the legislative text intelligible instead of relying upon

[1] Third Report, H.C. 127 (1951), pp. 4 to 7; Fourth Report, H.C. 154 (1951), p. 4.

the Note. The conditions which make for severe compression in the framing of statutes need not apply to Statutory Instruments; if expansion of the text would better bring out the substantial effect of the Instrument, Your Committee would welcome it. They have in mind such instances as S.I., 1951, No. 315 (discontinuance of need of licence for retail sale of fresh milk) or No. 845 (decontrol of duck eggs), where the purpose and effect so clearly revealed in the Note might usefully have been embodied in the text.

5. *Recital of Authority.*—In two previous Sessions Your Committee have recorded their view that an Instrument should refer to the particular section or sections of the Statute under which it purports to be made.[1] The issuing department must possess this knowledge and should not withhold it from members of the public. Your Committee, being responsible for reporting any unusual and unexpected use of a power, are themselves at a disadvantage if they are left to search the statute book for the precise statutory authority. Valuable work has been done by the departments in meeting this point, but it still requires emphasis. Thus the regulations contained in S.I., 1951, No. 899, recite that they are made under the authority of section 24 (3) of the Education (Scotland) Act, 1946. This subsection is as follows:—

> (3) For the purpose of this section a pupil shall be deemed to belong to the area in which his parent resides.

The Instrument conceals the fact that a new subsection, giving power to make regulations, was substituted by the amending Act of 1949. It is true that the Instrument contains a general provision that a reference to any enactment mentioned therein shall be a reference to the enactment as amended. While this provision may have the advantage of saving space and avoiding repetition, especially when employed in the drafting of statutes, Your Committee consider it inappropriate in this particular case where the regulations occupied less than two pages of print.

6. *Drafting.*—Without underestimating the technical difficulties of legislative expression, Your Committee would urge that Statutory Instruments (often having a more direct impact upon the life of the ordinary citizen than Acts of Parliament), should leave as little room as possible for doubt. They have in mind such an example as paragraph 10 (6) of the draft Workmen's Compensation (Supplementation) Scheme, which gives a right of audience before a Board to "the claimant or an association of employed persons of which the claimant is or has been a member". It was not clear to Your Committee whether by these words he would be allowed professional legal representation. On inquiry they were assured that this was the intention;[2] having found, however, that in several other cases—such as S.I., 1948, No. 506 (Medical practice committee), 1273 (National health service tribunal), 2683 (Conscientious objectors tribunals)—this right has been affirmed in express words, Your Committee deprecate such a matter being left as one of inference, possibly requiring interpretation in a court of law.

7. *Overlapping Powers.*—The continuance of emergency powers and the partial return to those of peace-time have led to an occasional overlapping. Thus regulations made under the Food and Drugs Act, 1938, appear to be parallel to, though rather narrower than, the orders made under the Defence (Sale of Food) Regulations, 1943. In considering the London Traffic (Miscellaneous Provisions) (Amendment) Order, 1951 (S.I., 1951, No. 736), Your Committee became aware of three sets of powers:—

> (*a*) those in section 10 and Schedule 3 of the London Traffic Act, 1924, as amended by the Act of 1933;
> (*b*) those under Defence Regulations 70, a war-time variant of (*a*); and

[1] Special Reports, 1946-47 (H.C. 141), p. x; *see* JOURNAL, Vol. XVI. 35; and 1948-49 (H.C. 324), p. 12; *see* JOURNAL, Vol. XVIII. 55.
[2] Sixth Report, H.C. 209 (1951), p. 3.

(*c*) those under an Act of 1839 as extended by the Festival of Britain Act, 1949.

In the particular instance it appeared that the principal code of regulations, made as "Provisional" in 1934 under (*a*), was not to be found in the annual volumes of Statutory Rules and Orders of that year, though its partial suspension under (*b*) may be found in the corresponding volumes of 1948. It also appeared that no steps have been taken to convert the Provisional Regulations of 1934 into substantive Statutory Rules because the department deemed them to be still in the experimental stage at the outbreak of the Second World War.[1] Besides drawing attention to the diversity of the regulation-making powers (which are not all alike subject to parliamentary control), Your Committee would suggest that the citizen should not be the less entitled to obtain copies of subordinate legislation by reason that the department regards it as experimental.

8. *Effect of Resolution and Annulment.*—The steps taken when the House has resolved that an address be presented praying for the annulment of an Instrument (under section 5 of the Statutory Instruments Act) exhibit diversity of practice.

The Housing (Rate of Interest) Regulations, 1950 (S.I., 1950, No. 1008) were the subject of a resolution on July 25, 1950. The revoking Order in Council (S.I., 1950, No. 1648) was made on October 9th. Section 5 provides that "any such resolution and revocation shall be without prejudice . . . to the making of a new Statutory Instrument". New Regulations (S.I., 1950, No. 1318) were made on August 3, before the revocation.

On the other hand, after the Fats, Cheese and Tea (Rationing) (Amendment No. 2) Order (S.I., 1951, No. 470) had been the subject of a resolution on April 9 last, it was revoked by Order in Council (S.I., 1951, No. 640) on April 12, and the new Order was made on the same day (S.I., 1951, No. 641), presumably after the revocation.[2]

The Statutory effect of the resolution is that "no further proceedings shall be taken" under the Instrument. Your Committee offer no opinion on the construction of the section, but they find it difficult to believe that the different procedures adopted in 1950 and 1951 were alike correct. They would prefer the latter procedure, namely that revocation should precede the making of the new Instrument.

In this connection a further difference of practice has been noted. In the case of the Housing (Rate of Interest) Regulations, 1950, the fresh Instrument (made fourteen weeks later) was given exactly the same short title as the old. In the case of the Fats, Cheese and Tea (Rationing) (Amendment) Orders, the fresh Instrument was distinguished by a fresh short title. Your Committee consider that different Instruments should not bear the same name.

9. *Reporting Procedure.*—When drawing the special attention of the House to an Instrument, Your Committee have sometimes felt that their Report might perhaps have been more useful if, instead of merely naming one or other of the seven grounds prescribed in their Order of Reference, it could have made a more extended statement.

Accordingly, they have adopted the practice, when asking a department for a memorandum in explanation of any point in an Instrument, of requesting the department to include at the beginning of its answer the substance of Your Committee's inquiry. They have also, in appropriate cases, specified in their Report the part of the Instrument to which they draw particular attention.

10. *Scope of Examination.*—In conclusion some figures are given in the table below for comparison with those submitted at the beginning of this Report.

[1] Fifth Report, H.C. 202 (1951), pp. 5-6. [2] A like sequence of resolution revocation and making of fresh Instruments occurred lately in conection with S.I 1951, Nos. 864, 865 and 866.

Those in the second column, showing the numbers of Instruments examined by Your Committee in a Session, and those in the third column, showing the proportion of that examination devoted to the temporary orders flowing from the war-time scheme of Defence Regulations, can be stated with precision. It is less easy to estimate the totals of all Instruments (tentatively set out in the fourth column) made in the equivalent period by any "Government department" within the meaning of the Statutory Instruments Act. The difficulty arises because the official register of all Instruments is maintained on the basis of the calendar year and not of the Session,[1] and because Instruments are examined by Your Committee which will have been made before the Session began. The comparative totals in the second and fourth columns naturally vary with the duration of the Session; that of 1948-49, for example, happened to be a long one.

1	2	3	4	5
Session	*Number examined by the Committee.*	*Number made under the Supplies and Services (Transitional Powers) Act, 1945, as extended, etc.*	*Approximate number of Instruments registered during the Session.*	*Number brought to the attention of the House.*
1947-48 ... ... (21/10/47 to 15/9/48)	1,189	512	2,860	10
1948-49 ... ... (26/10/48 to 16/12/49)	1,300	554	2,853	5
1950 ... ... (1/3/50 to 26/10/50)	682	277	1,434	7
1950-51 ... ... (31/10/50 to 23/7/51) —still running	715	283	1,727	17

A comparison of the numbers in the second and fourth columns indicates that Your Committee examines less than half the total of Instruments made. This is due to the limitation in their Order of Reference which restricts their scrutiny to such Instruments only as the parent statute (*a*) requires to be laid before Parliament and (*b*) directs to be subject to proceedings (affirmative or negative) in the House.

The Instruments for which the parent statute does not prescribe these two conditions of parliamentary control are presumably those of merely local application or those otherwise regarded as of minor significance. Your Committee have occasionally remarked that, owing doubtless to the somewhat haphazard evolution of statutory safeguards, Instruments of some importance are excluded from their scrutiny. To take the single example of the warrants and amending warrants made under the Post Office Act, 1908, recent Instruments have increased the poundage on money orders, the fees payable on cash-on-delivery packets and the postage rates on inland parcels—matters which affect large numbers of the public. When passing the Post Office Act in 1908, Parliament required these Instruments to be laid before the House, but did not (as modern statutes might be expected to do) direct them to be subject to either affirmative or negative proceedings. Your Committee have reason to think that a comprehensive study of outstanding statutory powers might reveal similar examples. While any drastic revision of all the parent Acts may be out of the question, Your Committee venture to draw attention to the existence of apparent anomalies in the scheme of parliamentary supervision,

[1] The totals registered in the relevant calendar years were 2,918 for 1947, 2,858 for 1948, 2,468 for 1949 and 2,144 for 1950.

and to hope that these matters would be included in any such investigation as was recommended by the Select Committee on Procedure in 1946, "to inquire into the delegation of legislative power and the procedure of the Houses in relation thereto".[1]

House of Commons (Members' Pension Fund: Report of Comptroller and Auditor-General and Government Actuary).[2]—On December 3, 1951, the Accounts of the House of Commons Members' Fund for the year ended September 30, 1951, together with the Report of the Comptroller and Auditor-General thereon[3] were laid and Ordered to be printed. The Comptroller and Auditor-General certified that the Revenue and Expenditure Account, Investments Account and Balance Sheet had been audited and found correct.

To follow on from the annual report of the Comptroller and Auditor-General for the year ended September 30, 1950, as shown in Volume XIX (at p. 39) the position is:

1.	2.	3.	4.
Year.	*Excess Income over Expenditure.*	*Capital Account.*	*Investments at Cost.*
	£	£	£
1950	2,307 18 7	71,243 18 1	68,114 7 8

Details of the investments at cost are given on p. 4 of the Report.

In his Report, the Comptroller and Auditor-General remarks that for the year, the expenditure on grants under S. 4 of the House of Commons Members' Fund Act, 1948,[4] amounted to £6,231 5*s*., an increase of £877 18*s*. 4*d*., as compared with the previous year, mainly owing to the charge for a full year of the awards made following the Dissolution of Parliament on February 3, 1950. Expenditure on Special hardship grants amounted to £574 3*s*. 4*d*., making a total of £2,056, paid to September 30, 1951, out of the maximum of £3,000, authorized to be appropriated for this purpose under S. 4 (3) (*a*) of the Act.

No gifts, devises or bequests were received by the Trustees in the year under the House of Commons Members' Fund Acts, 1939,[5] and 1948.

Government Actuary's Report.—On February 5, 1951, the House of Commons ordered the printing of the Report[6] of the Government Actuary presented pursuant to 2 & 3 Geo. VI. c. 49, S. 3 (5), made in compliance with the request of the Trustees (*vide* Secretary's letter of March 31, 1950). The Report (dated January 30, 1951), which is addressed to the Chairman of the Trustees, House of Commons

[1] Third Report (1946), H.C. 189-I, p. xii, para. 30; *see* JOURNAL, Vol. XVI. 129.
[2] *See also* JOURNAL, Vols. V. 28; VII. 38; VIII. 103; XI-XII. 129; XIII. 175; XIV. 44; XV. 149; XVI. 149; XVII. 214; XVIII. 57; XIX. 39.
[3] H.C. 50 (1951). [4] 11 & 12 Geo. VI. c. 36.
[5] 2 & 3 Geo. VI. c. 49. [6] H.C. 104 (1950-51); for First Periodical Report *see* JOURNAL, Vol. XIII. 176.

Members' Fund, Fees Office, House of Commons, shows the general financial position of the Fund as at September 30, 1950. It states that:

The balance of the Fund as at March 31, 1944, when the financial position was first formally investigated, amounted to £31,944. The Accounts for the 6½ years since then may be summarized as follows:

	£	£
Balance of Fund at March 31, 1944		31,944
add *Income*		
Members' Contributions	48,345	
Interest receipts	9,079	
Total receipts		57,424
		89,368
less *Expenditure*		
Ordinary allowances	17,251	
Special hardship payments	1,482	
Non-recurrent grants	75	
Administration	1,581	
Loss on realization of investments	41	
Total expenditure		20,430
Balance of Fund at September 30, 1950		£68,938

The market value of the investments was, however, £343 less, and when allowance is made for this depreciation, the balance in the Fund is reduced to £68,595.

Paragraph 3 of the Report reads:

3. The annual income from members' contributions has varied between about £7,000 and about £7,700 owing to the changes in the total membership of the House and to the intervals between Parliaments during two General Elections. The average income from this source has been about £7,400 a year. Interest receipts have grown with the size of the Fund from about £1,000 in 1945 to nearly £1,900 in 1950, and, over the period, represent an average yield of nearly 2¾% *p.a.*, on the Fund.

Expenditure on allowances and grants has risen greatly: first as a result of the allowances which began to be paid after the dissolution of Parliament in 1945; secondly, because of the increased size and scope of the payments authorized by the Act of 1948, and thirdly on account of further new cases following the dissolution in February, 1950. The effect of the rising expenditure has been to impose a check on the annual rate of increase in the balance of the Fund which, as is to be expected in a scheme of this nature, had been growing rapidly in the early years of its existence.

The details of the expenditure on allowances and grants and of the increase in the Fund are shown below year by year throughout the period.

Under paragraph 5 of the Report the following figures are given:

5. The numbers of continuing allowances granted during the six and a half years between April 1, 1944, and September 30, 1950, totalled 43, of which 9 were to widows (including 1 who had previously been in receipt of an allow-

ance which had ceased), 8 were special hardship allowances and 26 were ordinary allowances to former members. Of the ordinary allowances, 8 arose at the time of the dissolution of Parliament in 1945, 8 on the dissolution in 1950 and 10 at other times.

	Ordinary Allowances.	*Special Hardship Allowances.*	*Non-Recurrent Grants.*	*Fund at end of Year.*	*Increase in Fund in Year*
6 months ended Sept. 30, 1944	450	—	—	35,529	—
12 months ended Sept. 30, 1945	1,247	—	—	41,725	6,196
" " " Sept. 30, 1946	2,163	—	75	48,114	6,389
" " " Sept. 30, 1947	1,910	—	—	54,980	6,866
" " " Sept. 30, 1948	2,151	104	—	61,725	6,745
" " " Sept. 30, 1949	3,976	687	—	66,245	4,520
" " " Sept. 30, 1950	5,354	691	—	68,938	2,693

The changes in the numbers of beneficiaries throughout the six and a half years are summarized in the following statement:

	Former Members.		*Special Hardship Cases.*		*Widows.*	
Numbers in receipt of payments at April 1, 1944		2		—		9
Additions:						
New awards—at dissolution ...	16	26	—	8	—	9
at other times ...	10		8		9	
Deductions:		28		8		18
Deaths	3	6	2	2	1	3
Other cessations	3		—		2	
Numbers in receipt of payments September 30, 1950		22		6		15

Thus the numbers of beneficiaries grew from 11 at the beginning to 43 at the end of this 6½ year period.

6. The number of members of the House of Commons whose membership terminated between April 1, 1944, and September 30, 1950, was 560, analysed as follows:

	Total Terminations.	*Terminations after 10 or more Years' Total Service in the House.*
Death	41	21
Peerage, Judgeship, Governorship, &c.	20	12
At dissolution	480	272*
Other causes	19	8
Totals	560	313

* Of these, 167 were aged 60 or over.

The remainder of the Report, giving, as it does, detailed information in regard to the working of the Fund, will be given verbatim:

8. The total of the allowances in payment as at April 1, 1944, was at the rate of £900 a year in respect of 11 beneficiaries. By September 30, 1950, this had increased to £6,915, of which £4,200 was represented by ordinary

allowances to 22 former members, £650 by special hardship payments to 6 beneficiaries and £2,065 by allowances to 15 widows.

The increase of £6,015 was the net result of an annual addition of £5,830 in respect of 43 awards made during the 6½ years, of net augmentations of £1,595 in annual allowances (mainly as a result of the passing of the Act of 1948), and of an annual saving of £1,410 arising from 6 deaths and 5 cessations from other causes.

9. The position of the Fund as regards the future may be examined in alternative ways:

(*a*) by comparing the amount of the Fund with the capital value of the existing allowances, ascertained by actuarial valuation on the assumption that these allowances will be continued during the lifetime of the present beneficiaries, or

(*b*) by comparing the annual outgo on the existing commitments with the prospective annual income from members' contributions and interest on the investments.

10. Since the inauguration of the Fund, continuing allowances have been granted to 58 individuals. Of these 10 have died and the allowances have also ceased in 5 other cases, leaving 43 in receipt of allowances on September 30, 1950. So far as can be judged from such small numbers, the rates of mortality to which the beneficiaries have been subject do not appear on the whole to have been abnormal. On the basis of rates for men and women somewhat heavier than those actually experienced (to allow for the possibility of cessation in a few cases on account of increased income from other sources) and on the assumption of interest at 2¾ p.c., p.a., the capitalized liability on September 30, 1950, in respect of the 43 continuing allowances then on the books is estimated to have been about £52,000. The margin in the Fund of £68,595 (allowing for depreciation) on that date was thus about £16,600, which would have been broadly sufficient, for example, to provide allowances of say £200 a year to 10 ex-members of an average age of about 70 if a dissolution had then taken place and the need had arisen. On this hypothesis, the existing fund and its future interest earnings would have been absorbed, and the future contributions of the members would be available for the provision of grants to new beneficiaries.

11. From the alternative point of view referred to in paragraph 9, the annual income of the Fund as at September 30, 1950, was sufficient to provide allowances totalling about £2,200 a year more than those then in payment. In addition, some increase in the interest income may be expected so long as the Fund continues to grow though, as will be seen from the table in paragraph 3 above, the rate of growth is now rapidly decreasing. On the other hand, it would be necessary to hold in reserve during the course of a Parliament sufficient income to provide for the allowances to be paid in the intervals between Parliaments, when no contributions are received. If the whole of the surplus income were spent in the grant of further annual allowances, it would thereafter be possible to make new awards only in replacement of cessations of allowances already granted, which might be expected to occur at an average of perhaps between 3 and 4 a year. In this connection, it may be noted that the number of allowances granted between April 1, 1944, and September 30, 1950, excluding the special hardship awards, totalled 35, representing an average of between 5 and 6 a year.

12. The estimate of £52,000 given in paragraph 10 above includes the capital value of the 6 awards granted under Section 4 of the Act of 1948 which were on the books on September 30, 1950, and which were at the rate of £650 a year. The sums already paid under that Section had amounted to £1,482, leaving a balance of £1,518 (excluding interest on any total amount originally appropriated) remaining out of the maximum of £3,000 authorized

to be appropriated for the purpose under subsection (3) (*a*). Should these allowances be continued after this balance has been exhausted—within 2½ years—recourse will be necessary, in the absence of any appropriations under subsection (3) (*b*) to annual resolutions under subsection (4) authorizing the appropriation of part of the annual contributions of the members in order to provide the payments required.

13. A table is appended showing the composition, by age and Parliamentary service, of the House of Commons on September 30, 1950. On that date there were 168 members who had served for 10 or more years, including 72 who were aged 60 or over and 5 whose ages are not stated in any of the books of reference.

14. The corresponding table given in the previous report showed that, on March 31, 1944, there were 169 members aged 60 or over and 26 of unknown age who had served for 10 or more years. Since that date, as stated in paragraph 7 above, 167 members with the same qualifications had left the House of Commons at the dissolutions. There must be many surviving ex-members who are qualified by age and Parliamentary service for ordinary allowances should the need arise. It will be appreciated therefore that the table showing the composition of the present membership of the House of Commons does not indicate the total field from which claims on the Fund may arise in the future.

COMPOSITION OF THE HOUSE OF COMMONS ON SEPTEMBER 30, 1950, BY AGE AND PARLIAMENTARY SERVICE.

Age.	*Total Members.*	*Members whose Service in Parliament was—*	
		Less than 10 years.	*10 years and over.*
Under 40 ...	108	106	2
40-44 ...	98	91	7
45-49 ...	119	90	29
50-54 ...	93	64	29
55-59 ...	61	37	24
60 and over ...	126	54	72
Not stated ...	15	10	5
Totals ...	620*	452	169

* There were, on September 30, 1950, 3 vacant seats; in addition 2 members had not yet taken the oath and are not included above.

United Kingdom: Northern Ireland (Ulster Ministers and Partition).—On July 25,[1] the hon. member for Mid Down (Rt. Hon. J. M. Andrews) by *Private Notice* asked the Minister of Finance (Major Sinclair) whether—

his attention has been drawn to the report of a statement in the Press on Friday, July 20, attributed to the ex-Parliamentary Secretary for the Ministry of Industry and Commerce in the Eire Republic, to the effect that he had definitely got the view that Ulster Ministers recognized that ultimately Partition would end, and that a solution of the problem of Partition must inevitably be found some time; and whether he has any statement to make upon this matter—

to which the Minister of Finance replied:

Yes, Sir. I have consulted my colleagues and on their behalf and on my own I can categorically deny that anything said by us during recent discussions with Eire Ministers could be construed in the way suggested or was calculated to give any such impression.

[1] N.I. *Com. Hans.*, Vol. 35, No. 41, 1963.

United Kingdom: Northern Ireland: House of Commons (Mr. Speaker's Recovery).—On July 26,[1] the Minister of Labour and National Insurance (Major Neill) said:

Mr. Speaker, in the absence of the Prime Minister I should like to say how very glad we all are to see you back in your place this afternoon. We all regretted your illness, and we are glad you are so far recovered. We wish you a complete recovery. (Hon. members: Hear, hear.)

The hon. member for Mid Down (Rt. Hon. J. M. Andrews):

May I join in welcoming you back amongst us? I am sure we are all delighted to have you here again in the place which you adorn. We know that you have had a very serious illness, and from our hearts we wish you health and strength for many years to come. (Hon. members: Hear, hear.)

The hon. member for South Fermanagh (Mr. Colin Healy):

On behalf of the absent Opposition I should like to add my tribute to what has been said from the Government side. I think you sometimes find difficulty in dealing with some of us, but when you find it necessary to rebuke us you do it very gently. We were very sorry that you encountered the very serious illness that you did, and our thoughts and our sympathies were with you during that whole period. We are very glad to see you here again, and we hope that you will be here for a very considerable time. (Hon. members: Hear, hear.)

Mr. Speaker, in reply, said:

I should like to thank hon. members on both sides of the House for the very nice things they have said. I know, as my hon. friend (Mr. Healy) says, that sometimes we have our little difficulties, but I think we have always managed to work very well together. I should like to say that I am really back here now because of the very excellent doctors and the very excellent nurses of Northern Ireland whom I met in the Royal Victoria Hospital. I think it is on their account that I am back here so very quickly.

As Editor of this JOURNAL "we", who received such kindness and hospitality at the hands of the Speaker of the House of Commons of Northern Ireland (the Rt. Hon. Sir Norman Stronge, Bart., M.C., H.M.L.), when on our Busman's Holiday to that lovely country in 1949,[2] would like to say how much we regret Mr. Speaker's illness and now, however, rejoice in his recovery.

United Kingdom: Northern Ireland (Delegated Legislation).[3]—The order of Reference of the Statutory Rules, Orders and Regulations Joint Committee was the same as that for 1949.[4]

A multitude of Regulations were submitted to this Joint Committee which issued 12 Reports to both Houses of the Parliament of Northern Ireland most of which cases were reported upon as: "there are no reasons for drawing the special attention of the House to them on any of the grounds set out in the Order of Reference to the Committee."

[1] N.I. *Com. Hans.*, Vol. 35, No. 42, 2013. [2] *See* JOURNAL, Vol. XVIII. 276.
[3] *See also* JOURNAL, Vols. XV. 44; XVI. 43; XVIII. 62; XIX. 45.
[4] N.I. *Sen. Hans.*, Vol. 35, No. 3, 67; *ib. Com. Hans.*, No. 113.

In regard to the following matters, however, the Joint Committee made report as follows:

Sixth and Special Reports.[1]	*Committee's Remarks.*
Grammar Schools (Admissions, Scholarships and Special Allowances) (Amendment) Regulations.	That the special attention of the House be drawn to them under Sub-paragraph (1) of the Order of Reference on the ground that they impose a charge on public funds.

The Special Report reads as follows:

The Statutory Rules, Orders and Regulations (Joint Committee) have noted with concern that the Teachers' Superannuation Rules, dated June 7, 1951, made by the Ministry of Finance under Section 25 of the Teachers (Superannuation) Act (Northern Ireland), 1950, and presented to Parliament on June 19, 1951, do not apparently come within the scope of the Committee, by reason of what appears to be an omission in the Teachers (Superannuation) Act, 1950.

The Committee recommend that an early opportunity should be taken by the Government to rectify the Teachers (Superannuation) Act in this respect so as to subject Rules made under the Act to scrutiny by this Committee, and to provide that any member of the Senate or of the House of Commons should have the right to move the annulment of Rules of this kind.

Eighth Report.[2]	
Royal Volunteer Constabulary Pay (Amending) Order.	
Grammar School (Grant Conditions) Amending Regulation No. 2.	
Voluntary Grammar Schools Meals Grant Amending Regulations.	*Committee's Remarks.*
Welfare Authorities (Charges for Residential Accommodation) (Amending) Regulations.	That the special attention of the House should be drawn to them under sub-paragraph (1) of the Order of Reference on the ground that they impose a charge on public funds.
Training College Teachers (Salaries and Allowances) Regulations.	
Ninth Report.[3]	
Electoral (Registration Expenses) Regulations.	
Family Allowances (Guernsey Reciprocal Arrangements) Regulations.	

[1] H.C. 963. [2] H.C. 971. [3] *Ib.* 981.

Channel Islands: Jersey (Separation of Judicial and Legislative Functions).[1]—To quote from its title page: Law No. 1 of 1951 is described as "Acte des États en date du 31 Octobre 1950 intitule" Judicial and Legislative Functions (Separation) (Jersey) Law, 1951", confirmé par Ordre de Sa Majeste en Conseil en date du 29 Janvier 1951 (*Enregistré le 3 Février* 1951)—the Law itself being in English.

The Preamble recites that:

WHEREAS, by the proviso to paragraph (2) of Article 3 of the Royal Court (Jersey) Law, 1948,[2] the Royal Court and the States were required, within the ten years next following the coming into force of that Law, to appoint, from amongst their respective members, delegates to consider, in joint consultation, the possibility of ensuring the complete separation of judicial and legislative functions without unduly depriving the Royal Court or the States of the services of a sufficient number of experienced persons to ensure the efficient discharge of the function both of the Royal Court and of the States:

AND WHEREAS delegates of the Royal Court and of the States, appointed for the purpose aforesaid, have agreed that such a separation may now properly be effected;

The enactment words and the Articles of this Law are:

THE STATES, subject to the sanction of his Most Excellent Majesty in Council, have adopted the following Law:—

ARTICLE 1. *Separation of Functions.*—(1) A Jurat shall not be disqualified for being elected to the office of Senator or Deputy, but he shall cease to hold the office of Jurat on taking the oath of office of Senator or Deputy, as the case may be.

(2) A Senator or a Deputy shall not be disqualified for being appointed to the office of Jurat, but he shall cease to hold the office of Senator or Deputy, as the case may be, on taking the oath of office of Jurat.

ARTICLE 2. *Repeal.*—In paragraph (2) of Article 7 of the Assembly of the States (Jersey) Law, 1948,[3] the words "a Jurat" shall be deleted, and in paragraph (2) of Article 3 of the Royal Court (Jersey) Law, 1948,[4] sub-paragraph (*c*) and the proviso shall be deleted.

ARTICLE 3. *Saving.*—Nothing in this Law shall disqualify those Jurats who were elected to the office of Senator at the ordinary election held in the year nineteen hundred and forty-eight for holding the offices both of Jurat and of Senator during the term of office for which they were elected at that election.

ARTICLE 4. *Short Title.*—This Law may be cited as the Judicial and Legislative Functions (Separation) (Jersey) Law, 1951.

To be printed, published and posted.

F. DE L. BOIS,
Greffier of the States.

[1] *See also* JOURNAL, Vol. XVIII. 156.
[2] Tome 1946-1948, p. 574.
[3] *Ib.* p. 466.
[4] *Ib.* p. 574.

Channel Islands: Alderney (Election of President of the States).[1]—Upon the re-election (unopposed) of Commander S. P. Herivel, D.S.C., C.B.E., as President of the States in December, 1951, it was decided that he should himself read out the Oath upon his resumption of office in January, 1952, namely:[2]

> I, Sidney Peck Herivel, do swear by Almighty God, etc. (*the form of Oath being that given in respect of that taken by Deputies*).[3]

Channel Islands: Alderney (Constitutional).[4]—The following administrative event in 1951 which perhaps impinges on matters of constitutional interest has been the transfer to the States of Crown Lands and with them the "Seigneurial Rights" which the Crown, as Lord of the Manor, used to enjoy. These Rights include the right to receive "Congé d'acquet", *i.e.*, permit to acquire Real property, which carries a fee of 3 per cent. of the consideration, provided that the same property has not changed hands and paid "congé" fees during the preceding year and a day. In addition there are rights of flotsam, jetsam, wreck and, no doubt, also Treasure Trove. The harbour was apparently manorial property because harbour dues were similarly transferred from the Crown to the States. The only manorial right retained by the Crown seems to be the Advowson of the Parish Living. The incumbent is appointed still by the Crown.[2]

Channel Islands: Corrections in Busman's Holiday II Article.—The following corrections are to be noted in the "Busman's Holiday No. II" Article, appearing in Volume XIX:

Jersey.—The Legislature is called "the States" not "the States of Deliberation" as in Guernsey and Alderney. (*See references* Vol. XIX. 333, 358 and 359.)

"*La Clameur de Haro*" not "Le". (*See references* Vol. XIX. 370,373.)

Canada (British North America Act, 1951).[5]—As with other amendments of the B.N.A. Act, 1867,[6] the procedure began with an Address to the King, followed by the introduction of a Bill at Westminster, the passing of such Bills being a matter of formality in endorsement of the wishes of the Canadian Government and Parliamena.

AT OTTAWA.

Address to the King.

House of Commons.—On May 4,[7] the Prime Minister (Rt. Hon. L. S. St. Laurent) stated that the Minister of Justice (Hon. S. E. Garson) had that morning received the final agreement of all the 10 Provincial Governments as to the terms of the proposed amendment

[1] *See also* JOURNAL, Vols. XVIII. 178, 179; XIX. 367. [2] Contributed by the Clerk of the States.—[ED.] [3] *See also* JOURNAL, Vol. XIX. 367.
[4] *Ib.* XVIII. 172-180; XIX. 366-370.
[5] *See also* JOURNAL, Vols. IV. 14; VI. 191; VIII. 30; IX. 97; XV. 158; XVIII 203; XIX. 177. [6] 30 & 31 Vict. c. 3. [7] 1951, III, *Com. Hans.* 2680.

to the British North America Act respecting old age pensions. The text of the Address in the English and French languages had been prepared and the Clerk asked to place it on the Table for Monday.

The Address is in the usual form,[1] its object being to add, after S. 94 of the B.N.A. Act, 1867,[2] the following heading and section:

OLD AGE PENSIONS

94A. It is hereby declared that the Parliament of Canada may from time to time make laws in relation to old age pensions in Canada, but no law made by the Parliament of Canada in relation to old age pensions shall affect the operation of any law present or future of a Provincial Legislature in relation to old age pensions.

The Prime Minister expressed satisfaction with the harmonious relations between the Federal and the Provincial Governments on matters of national interest.

On May 7,[3] Mr. St. Laurent moved the Motion for the Address to the King, which was agreed to.

Questions were asked from time to time in the House of Commons of Canada, as to the expedition of the measure at Westminster.

AT WESTMINSTER.

The Bill was presented in the House of Commons on May 11,[4] and on May 30 passed the remaining stages in 5 minutes, the matter being described by the Secretary of State for Commonwealth Relations (Rt. Hon. P. C. Gordon Walker) as one of constitutional convenience.

In moving 2 *R.* of the Bill in the Lords on May 31,[5] the Parliamentary Under Secretary of State for Commonwealth Relations (Lord Ogmore) said that the Constitution of Canada is governed by the B.N.A. Act, 1867, as amended by subsequent legislation. Under the original Act the Federal Parliament received exclusive legislative powers in certain matters and in all cases where power had not been specifically assigned by the Act to the Provincial Legislatures. There was no provision in the Act of 1867 enabling the Canadian Parliament to amend the Constitution created by the Act.

The main object of the Statute of Westminster, 1931,[6] was to provide for the entire legislative independence of the Dominions. Nevertheless, at the request of the Canadian Government, S. 7 of such Statute provided that:

Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867-1930, or any order, rule or regulation made thereunder.

The same section also provided that:

The powers conferred by this Act upon the Parliament of Canada or upon the Legislatures of the Provinces shall be restricted to the enactment of laws in

[1] *See* JOURNAL, Vol. XVIII. 204.
[2] 30 & 31 Vict. c. 3.
[3] 1951, III, *Com. Hans.* 2749.
[4] 387 *Com. Hans.* 5, s. 2303; 388 *ib.* 225.
[5] 171 *Lords Hans.* 5, s. 975.
[6] 22 Geo. V. c. 4.

relation to matters within the competence of the Parliament of Canada or of any of the Legislatures of the Provinces respectively.

There was a further Act in 1949 intituled the British North America Act (No. 2) Act, which gave the Canadian Parliament the power to amend the Canadian Constitution, but still with an exception, namely:

except as regards matters coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces

—and with relation to certain other matters. The position therefore was that amendments of the Canadian Constitution relating to matters, at present the exclusive concern of the Provincial Legislatures —such as old age pensions—still required legislation at Westminster.

The Federal and the Provincial Governments had, however, agreed in conference that provision should be made for the Federal Parliament in future to pass legislation, if it so desires, relating to old age pensions and that Provincial Governments retain their existing powers in that regard. Address had therefore been submitted to His Majesty requesting that the Federal Parliament be enabled to legislate concurrently with the Provincial Legislatures on old age pensions. His Majesty had been pleased to approve the petition and the Canadian Government had been so informed.

The Marquess of Salisbury and Viscount Samuel, from their respective Benches, supported the Minister; the Bill passed 3 *R.* (the Committee stage having been negatived by the suspension of S.O. XXXIX) and duly became 14 & 15 Geo. VI. c. 32.[1]

AT OTTAWA.

House of Commons.—On June 4,[2] the Prime Minister announced that the British North America Act, 1951, had been passed and that the Canadian Government now proposed to take steps to enable them to make agreements with the Provinces to provide old age security to persons in need between the ages of 65 and 70 and to provide authority for the registration of persons over the age of 70 for the universal old age pensions. At the same time, provision would be made for the continuance of Federal assistance in the payment of pensions to the blind. The Old Age Assistance Act passed the House of Commons and the Senate in the same Session.

Canada: House of Commons (Treatment of Documents).—On May 24,[3] when the House was in *Com.* of Supply, the Deputy Chair-

[1] By the kind courtesy of that distinguished soldier, Lieutenant-General Sir Brian Horrocks, the Gentleman Usher of the Black Rod " we " had the privilege of being present in the Commons Lobby on May 31 to see Black Rod deliver (*see* JOURNAL, Vol. XIX. 130) the summons of the Royal Commission to the Commons to attend the Lords to hear the Commission read and also to be present in the Lords when the Speaker and the Commons stood at the Bar of the Lords during its reading. It was a happy coincidence that the Bill to receive Royal Assent on this occasion was the British North America Act, 1951.—[ED.]

[2] 1951, III, *Com. Hans.* 3663. [3] 1951 *Com. Hans.*, Vol. IV, 3358, 3362.

man ruled that documents may be printed as an appendix to the report of the day's debate in *Hansard*, provided that the unanimous consent of the House in *C.W.H.* be obtained.

Canada: House of Commons (Provincial Policies not debatable).—On June 1,[1] when the House was in *Com.* of Supply, the Deputy Chairman ruled that members should not discuss policies enforced by Provincial Governments.

Canada: House of Commons (Jurisdiction of Chairman).—On May 11,[2] when the House was in *Com.* of Supply, an hon. member, speaking, complained to the Chair that he could not be heard in the Chamber. The Deputy Chairman ruled that hon. members behind the curtain should remain silent, with the reminder that the jurisdiction of the Chairman extended not only to the Chamber but also to the lobbies. The Chairman also suggested that if hon. members did not wish to resume their seats and listen to debates, they should go to other quarters.

***Canada: House of Commons (Rulings confirmed on Appeal).**—On May 3,[3] when the House was in *Com.* of Ways and Means, the hon. member for Red Deer (Mr. F. B. Shaw) moved:

That Clause 1 of the proposed amendment to the Excise Tax Act be deleted and that the remaining Clauses be re-numbered accordingly.

In the course of debate question was raised that the amendment unquestionably affected the balance of Ways and Means.

After some discussion upon the point, the Deputy Chairman observed that, according to Canadian procedure,[4] a complicated question could be decided by a member moving that a certain portion of the Resolution be deleted, provided that it did not affect the balance of Ways and Means. If the amendment should be carried, namely, to delete the first paragraph which provides that the rate of the general sales tax be increased from 8 to 10 per cent., the balance of Ways and Means would be altered. Therefore, continued the Deputy Chairman, he would have to rule the amendment out of order. On the other hand, the debate had revealed that hon. members would like to express their opinion on the particular paragraph, which they could do, as the unanimous consent of the Committee could set aside the rule.

Such consent, however, not being forthcoming, the Deputy Chairman had to declare the amendment out of order for the reasons given. The hon. member for Red Deer thereupon appealed against the Ruling.

The Speaker having resumed the Chair, the Chairman made the following report to him:

A Motion by Mr. Shaw was ruled out of order on the ground that it was not in order to move the deletion of a particular Clause in an Excise Tax Resolution because it alters the balance of Ways and Means.

[1] *Ib.*, Vol. III, 3625.
[2] *Ib.* 2662, 3.
[3] *Ib.* 2956.
[4] Beauchesne III, Art. 500.

Mr. Speaker then put the question as follows:

Mr. Beaudoin of the Committee of Ways and Means reports that Mr. Shaw moved an amendment to a Resolution which was being considered by the Committee. The Chairman ruled that the amendment was out of order because it was not in order to move the deletion of a particular Clause in an Excise Tax Resolution as it altered the balance of Ways and Means. From that Ruling there was an appeal by Mr. Shaw and others.

The House divided on the question:
"Shall the ruling of the Chairman be confirmed?" (Yeas, 112; Nays, 46).

Rulings are not debatable.[1]

Canada: House of Commons (Journals do not take note of Clauses of Bills carried in C.W.H.).—On May 29,[2] upon an hon. member raising the question of the official record as to the carrying of a section, the Chairman stated that there was no mention in the Votes and Proceedings of sections of Bills carried in *C.W.H.*

Canada: House of Commons (Adjournment (Urgency) Motions).[3] —*Not accepted.*

On March 5,[4] an hon. member asked leave, under S.O. 31, to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance and stated the subject to be:

The failure of the Government to meet the legitimate demands of wheat producers by announcing a final payment of 8.3 cents per bushel for wheat in the 5-year pool, when farmers are entitled to a final payment of not less than 25 cents.

In view of a meeting being held in Regina by the representatives of western agriculture next day, the hon. member believed this matter of urgent importance.

Mr. Speaker said that his recollection was that when the announcement was made concerning this payment the Prime Minister stated there would be ample opportunity to debate it when the House went into Com. of Supply on the supplementary estimates, which would be within about 10 days. It would therefore seem that as this question could be fully discussed in the near future, the Motion would not come within the rule concerning urgency and the Motion was not allowed to stand.

On March 8,[5] a similar Motion was moved, the subject being:

The announcement in yesterday's Press concerning the rise in the cost of living index to an all-time high of 175·2 and the need for the immediate establishment of price controls to stem any further rise in the cost of living.

Mr. Speaker said that as, according to the statement made the previous night by the Minister of Public Works, the Emergency Powers Act would be the first matter to be considered by the House that day, there would be every opportunity, within the rules and

[1] 1951 *Com. Hans.*, Vol. IV. 2641. [2] *Ib.*, *see* JOURNAL, Vol. IV. 3500.
[3] *See also* JOURNAL, Vols. XIII. 52; XIV. 59; XVI. 152; XVIII. 63; XIX. 48.
[4] 1951 *Com. Hans.*, Vol. I, 884. [5] *Ib.* 947.

within the scope of that Bill, to discuss the matter on which the hon. member had moved the adjournment of the House. Mr. Speaker, therefore, said that he did not think he could allow the Motion to stand.

Canada: House of Commons (Financial Resolution).—On June 21,[1] when the House was going into *C.W.H.*, on a financial Resolution for an Old Age Pensions' Act, Mr. Speaker ruled under S.O. 43 that as the Minister does not, on a Resolution preceding a Bill, close the debate nor has he the right of reply, this was not a substantive Motion.

Canada: House of Commons (Amdt. on 3 R.).—On June 20,[2] an *amdt.* was moved to the question for 3 *R.* of the National Housing Bill, to refer the Bill back to *C.W.H.* with instructions that they have power to amend the Bill in certain respects.

Mr. Speaker ruled that as the *amdt.* dealt with matter not contained in the Bill, paragraph 1 of the *amdt.* not being within the scope of the Bill and as paragraph 2 proposed to amend the Bill in such a way as to alter its whole principle, the *amdt.* was out of order.

***Canada: House of Commons (Reading of Speeches).**—On May 29,[3] Mr. Speaker made a statement in regard to his attention being drawn by an hon. member to the undesirable practice, which was becoming very common, of members reading their speeches, Mr. Speaker remarking that the House was not a debating Society nor an assembly gathered together to listen to the reading of essays.

Canada: House of Commons (Irregularities of Privileges).—On May 29,[3] Mr. Speaker, in a statement, referred to the growing practice of hon. members rising on so-called questions of Privilege and stated that there were only 2 types of questions of Privilege—one which affected a member personally and was a matter of personal Privilege and the other which affected the Privilege of all hon. members.

It was not a question of Privilege to inform the House that an organization or any citizen had brought distinction to a member's constituency. Nor was it a question of Privilege to call the attention of the House to the fact that certain school children or others were in the gallery. No reference should be made to the gallery except on the occasion of the attendance there of a distinguished representative of another country.

Canada: House of Commons (Oral Questions).—On May 29,[4] Mr. Speaker also drew attention to the procedure in regard to the asking of oral *Qs.* and referred members to S.O. 44, which should be followed whenever possible. These oral *Qs.* were asked when Orders of the Day were called and were frequently asked without notice; but such questions should be asked only in connection with very urgent and important matters of public concern, and only if it would not be in the public interest to place them on the Order Paper and receive

[1] *Ib.* Vol. V. 4424. [2] *Ib.* 4354. [3] *Ib.* Vol. III. 1494. [4] *Ib.* 1494.

answers in accordance with the method provided for in the Standing Orders. The *Qs.* should not be prefaced by the reading of letters, telegrams, etc.

***Canada: House of Commons (Rights of Debate to Ministers and Parliamentary Assistants—i.e., "Parliamentary Secretaries").**—On June 4,[1] during 2 *R.* debate on the Customs Tariff Bill, Mr. Speaker drew attention to the fact that if the Parliamentary Assistant, who did not move 2 *R.* spoke now he would close the debate. He also remarked that it was very difficult to follow the usual procedure if a Parliamentary Assistant, in piloting a Bill through the House for the Minister, spoke on the latter's behalf and also in his own personal capacity as a member. The practice was that if a Minister did not speak on the introduction of a Bill, he could not speak until closing the debate. Mr. Speaker therefore considered that the Parliamentary Assistant should be allowed to speak in reply or during the debate.

Canada: House of Commons (Reading in House of Unsigned letters.)—On February 19,[2] Mr. Speaker drew the attention of an hon. member to the rule of the House that unsigned letters should not be read.

***Canada: House of Commons (Attitude of Members during Divisions.)**—On May 3,[3] Mr. Speaker stated that, under S.O. 12, it was irregular for an hon. member to move from one place to another or to leave the Chamber while a vote was being taken or before the vote was announced. All members of the House would appreciate it if hon. members could be in their own seats during the vote and would remain there until the result of the vote was announced. (*For* method of divisions see JOURNAL, Vol. I. 95.)

Canada: House of Commons (Debate on Motions).—On October 23,[4] during the consideration of a Motion for approval of Canada's Continued Participation in Peace Efforts, the debate on the Motion moved by one member was closed by another member, upon the unanimous consent of the House.

***Canada (The office of Clerk of the House).**[5]—In Volume XIX of the JOURNAL (at p. 305) reference is made to the Clerks of some of the Provincial Legislatures of Canada being allowed in cases where their appointments are part-time, to engage in private practice as barristers, solicitors, etc.

We have now checked up the returns which were sent in to us in reply to inquiry made some years ago and the present position is as follows:

Federal Parliament.—The Clerks are assimilated to Deputy Heads under S. 2 (*c*) of the Civil Service Act, 1918, which provides that "deputy" or "deputy head" means and includes the deputy of the Minister of the Crown presiding over the Department, the Clerk of

[1] *Ib.* Vol. IV. 3676. [2] *Ib.* Vol. I. 478; Beauchesne citation 3, Ed. 270.
[3] 1951 *Com. Hans.*, Vol. III. 2664. [4] *Ib.* Vol. 93, No. 9, 314.
[5] Contributed by the various Clerks in question.—[ED.]

the Privy Council, the Clerks of the Senate and House of Commons, etc.

Section 7 (2) thereof, provides that a deputy head shall give his full time to the Civil Service and shall discharge all duties required by the Head of the Department or by the Governor-General-in-Council, whether such duties are in his own department or not. Under this Statute, therefore, the Clerk of the House of Commons (or of the Senate) is not allowed to practise his profession while in office.

Provincial Legislatures.

Ontario.—While the point of a Clerk of the Legislative Assembly engaging in private practice as a barrister, etc., is not covered, either by the Rules of the Legislature or by Statute, there is a general prohibition against any member of the Civil Service engaging in outside occupations, which would probably be considered to apply to the Clerk, the question has never arisen as no Clerk has engaged in outside practice in the history of the Province. Also, as the Clerk and Clerk-Assistant are the Chief Election Officers for the Province in addition to their duties as Clerks, the time element would prohibit such practice.

Quebec.—Under the Bar Act (Revised Statutes, 1941, c. 262) the General Corporation of the Bar of the Province may make bye-laws for defining and enumerating the professions, trades, occupations, businesses or offices incompatible with the dignity of the profession of Advocate, as well as the offices or charges incompatible with the practice of the profession (S. 8, subsection 1, para c). A bye-law was accordingly made by the Bar which now reads as follows:

53.—The following offices and employments are incompatible with the exercise of the profession of Advocate:

1.—. . .

2.—Under reserve of the exceptions provided by law, salaried employments in the Federal or Provincial Civil Service, with the exception of the temporary offices of translator, stenographer or sessional employee of the Legislature.

This prevents the Clerks at the Table from practising law, as they are not in the exceptions provided by law (subsection 2 of S. 8 of the Bar Act). Moreover, the Government of the Province requires that such Clerks devote their whole time to the fulfilment of their duties.

Nova Scotia.—The Chief Clerk and the Clerks-Assistant of the House of Assembly at the present time are both Barristers and Solicitors of the Supreme Court of this Province and there is no restriction whatsoever on their conducting private practice in any of the Courts of this Province. The Clerk and his Assistant practice in the towns of Annapolis Royal and Antigonish respectively.

New Brunswick.—The Clerks of the House have usually been lawyers and would be compelled to practice their profession on account of the smallness of the salary.

Manitoba.—Under the regulations of the Civil Service Act of this Province, a barrister holding the office of Clerk of the House may not engage in private practice.

British Columbia.—So far as the Clerk of the Legislative Assembly is concerned, he is, if a member of the legal profession (and it is understood he always has been), allowed to practise both in and out of Session, although naturally during Session his Parliamentary duties do not permit of much opportunity for private practice. His remuneration is in the nature of a Sessional indemnity. During the Parliamentary Recess there is, of course, a certain amount of correspondence, etc., which he has to attend to, but for which no special allowance is made.

Prince Edward Island.—Clerks of the Legislative Assembly, if of the legal profession, are allowed to practise unconditionally both during the Session and the Parliamentary Recess.

Alberta.—There has not been a Clerk of the Legislative Assembly, who has been a member of the legal profession, but the custom is that a solicitor in the employ of the Government is not allowed to practise. The Legislative Counsel attached to the Legislative Assembly is also not allowed to practise privately so long as he remains on the Government pay-roll, although he still pays his dues in to the Law Society of Alberta and is recognized by them as a practising lawyer. If a legal man were taken on as Clerk of the House for the Session, the present incumbent is of opinion that he would be debarred from practising while the House is in Session, but would resume his practice as soon as he was relieved from Sessional work.

Saskatchewan.—Section 55 of the Public Service Act[1] reads as follows:

> 55. Except with the express permission of the Commission,[2] which permission may be at any time withdrawn, no employee shall engage in or undertake any business or private practice of any profession or trade, whether as principal or agent.

Section 55, however, applies to the "classified" positions in the Public Service and thus is not applicable to the Clerk of the Legislative Assembly who, being a "permanent head" of a department or branch, is a member of the "unclassified service"[3] and an appointee of the Lieutenant-Governor-in-Council. The conditions of his employment as Clerk, therefore, are matters of agreement between him and the President of the Council.

The present incumbent of the Clerkship is not a lawyer. However, since Sessions of the Legislature average 6 weeks in duration, it follows that Council itself must provide other employment in the Service for the remainder of the year in order to permit the Clerk to practise his profession or engage in his trade or business.

The present Clerk, between Sessions, is employed by the Execu-

[1] Stat. Sask.; 1947, c. 4.
[2] The Public Service Commission under the Act.
[3] *Idem*, s. 9.

tive Council itself, again in an "unclassified" position so far as the Act is concerned. In addition, by arrangement with successive Presidents of the Council, he has been permitted to engage in his profession (Journalist and Editor) non-politically. His 2 immediate predecessors in the Clerkship were permitted to engage in their private businesses during their respective tenures of office.

Newfoundland.—The present holder of the office of the Clerk of the House of Assembly is in practice as a Barrister and Solicitor. The office of the Clerk of the House is, therefore, a part-time job in order to make up the income. This means that the Clerk cannot devote as much time to the affairs of the House as he would sometimes wish. The position of the Clerk-Assistant of the House is also part-time.

***Canada: Saskatchewan (M.P.s and Government Contracts and Pecuniary Interest).**—An Act amending The Legislative Assembly Act,[1] assented to on April 5, 1951, made provision for an increase of one in the Membership of the Assembly (to 53), and incorporated several additions to the "exceptions to disqualifications" section[2] which passed unchallenged in the heated controversy over the schedule to the Act containing revised constituency boundaries. Certain of the additional exceptions, reasonable and timely, were expected and overdue, and have now become permanent fixtures. These, briefly, give members the right to hold licences or permits to cut hay on Crown lands, to enter into grazing or cultivation leases with the Government, or to obtain fishery licences, these rights being conferred with the proviso that no member shall vote on any question affecting the licence, permit or lease in which he is interested. A further clause enables members, without fear of disqualification, "to enter into a contract or agreement for insurance with, or receive payment of a claim from, The Saskatchewan Government Insurance Office."[3] This also fell in the "overdue" category, as the automobile accident insurance feature of the Insurance Office business is compulsory upon all owners and drivers of motor vehicles in the province.

Two other exceptions were included in the 1951 amending Act which have since been deleted. These, at first glance, also appeared reasonable and timely in view of the progressive expansion of Government-owned business enterprises, the increasing development of the natural resources of the province, and the intensive search for oil, gas and minerals (particularly uranium) upon which an estimated $50 million of private capital will be expended this year (1952).[4]

The clauses in question permitted a member, without vacating his seat: (1) to enter into a contract with the Government for "the supply, sale, lease or other disposition to him of any real property administered or sold by the Government"; (2) to hold a mining lease,

[1] Stat. Sask., 1951, c. 2. [2] *Idem*, s. 3. [3] *Idem*, s. 3(1), pars. (m), (n), (o). [4] Budget Speech (Prov. Treasurer), p. 9.

permit, licence, grant or other disposition, or a contract or agreement with the Government or any Crown Corporation " with respect to the same or to mines and mining rights . . . directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third party ", subject to the proviso already noted denying the member a vote on any question affecting the lease, etc., in which he is interested.[1] A further subsection provided that these exceptions " shall be deemed always to have been in force ".[2]

Some months elapsed before the full implications of these amending clauses, particularly the retroactive feature and the right to hold mining leases, etc., through a trustee or third party, were brought to light in letters to the Press and in newspaper editorials.

***Canada: British Columbia (M.P.s and Government Contracts).**[3] —Section 24 of the Constitution of 1948[4] amends S. 29 of the Constitution of 1944 by making the following provision:

24. No person holding or enjoying, underaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with His Majesty, or with any public officer or department, with respect to the public service of the Province, or under which any public money of the Province is to be paid for any service or work, shall be eligible as a member of the Legislative Assembly, nor shall he sit or vote in the same. R.S., 1936, c. 49, S. 24.[5]

***Canada: British Columbia (Offices of Profit under the Crown).**— The following provision is made in the Constitution:[6]

23. (1) No person accepting or holding in the Province any office, commission, or employment, permanent or temporary, to which an annual salary, or any fee, allowance, or emolument, or profit of any kind or amount whatever from the Province is attached, shall be eligible as a member of the Legislative Assembly, nor shall he sit or vote as such; but nothing in this subsection shall make any person ineligible as a member of the Legislative Assembly, or disqualify him to sit or vote as such, by reason of his accepting or holding office as a member of the Executive Council, whether as head of a department in receipt of a salary or allowance or as occupying the position of Premier, or by reason of his accepting or holding the office of Speaker or Deputy Speaker of the Legislative Assembly, and nothing in this subsection shall make any person ineligible as a member of the Legislative Assembly, or disqualify him to sit or vote as such, by reason of his accepting any fees for medical services rendered by him and paid for out of Consolidated Revenue.

(2) The fact that any person who has been appointed a member of the Executive Council without Portfolio has been paid or is entitled to payment of the expenses incurred by him in travelling or otherwise in the discharge of his official duties shall not make ineligible that person as a member of the Legislative Assembly, nor disqualify him to sit and vote in the Legislative Assembly, whether he is elected while holding such office or otherwise. R.S., 1936, c. 49, s. 23; 1947, c. 17, s. 4.[7]

***Canada: Newfoundland (The office of Clerk of the House).**— With reference to the Article on this subject in our last issue,[8] under

[1] Stat. Sask., 1951, c. 2, s. 3(1), pars. (k), (l).
[2] *Idem*, s. 3(2). [3] *See also* JOURNAL, Vol. XVIII. 301. [4] 1948 Chap. 65.
[5] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[6] 1948 Chap. 65. [7] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[8] *See* JOURNAL, Vol. XIX. 313.

the Statutes Act, 1951,[1] the Clerk of the House of Assembly is required to endorse on every Act, immediately after the title thereof, the day, month, and year when it was by the Lieutenant-Governor assented to or reserved by him for the signification of the pleasure of the Governor-General; and in the latter case the Clerk endorses upon it the day, month, and year 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 the Governor-General was pleased to assent to it; and the endorsement is taken to be part of the Act. The date of such assent or signification, as the case may be, is the date of the commencement of the Act, if no other date of commencement is therein provided.

All Bills as finally passed are printed on paper and signed on each page by the Clerk of the House of Assembly before presentation to the Lieutenant-Governor for signature.

Australia: Federal Parliament Jubilee.[2]—May 9, 1951, was the Jubilee of the opening of the First Commonwealth Parliament in Australia. Parliament was not under summons at that date following an election, but when the Houses assembled in June the Jubilee was appropriately celebrated. Greetings from overseas were received, including messages from the Italian Chamber of Deputies, the Belgian House of Representatives, the Danish Parliament and the Swedish Parliament. A cloud rolled over the celebrations with the sudden death on the night of the State Ball of the Rt. Hon. J. B. Chifley (Leader of the Opposition in the House of Representatives). As a war-time Prime Minister and as a citizen, he had endeared himself to the residents of Canberra, and his passing cast a heavy shadow over the Canberra Jubilee celebrations.

Australia: Federal: Constitutional: Communist Bill to Referendum.[3]—On July 5, the Prime Minister (Rt. Hon. R. G. Menzies) introduced the Constitution Alteration (Powers to deal with Communists and Communism) Bill and moved the Second Reading.[4] Debate followed on July 10 and 11. The Closure was applied and 3 *R.* was agreed to after division, by an absolute majority, as required by S. 128 of the Constitution.[5]

The Senate also approved the Bill by an absolute majority. It now awaits a Referendum of the people.[6]

Australia: Federal (Increase in Number of Ministers).[7]—The Prime Minister (Rt. Hon. R. G. Menzies), on July 13,[8] introduced a Bill to increase the number of Ministers from 19 to 20. Both Houses agreed to the measure.[9]

[1] No. 5, Ss. 4 and 5(2).

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

[3] *See also* JOURNAL, Vols. V. 117; XI-XII. 186; XIII. 64; XV. 175; XVI. 157.

[4] 1951 VOTES, 59.

[5] *Ib.* 70.

[6] Contributed by the Clerk of the House of Representatives.—[ED.]

[7] *See also* JOURNAL, Vol. XI-XII. 43.

[8] 1951 VOTES, 78.

[9] Act No. 17 of 1951.

Australia: Federal: House of Representatives (Promotion of Matters following Professional Advocacy).—A question having been raised on this point, Mr. Speaker Cameron made a statement on March 13,[1] informing the House that the rule relating to advocacy by hon. members of matters in which they had been concerned professionally, referred to in May's Parliamentary Practice,[2] was binding upon all hon. members except the appearances in Court by the Attorney-General when representing the Commonwealth.

Later, this ruling was applied to an actual case. Dr. H. V. Evatt, K.C. (Leader of the Opposition), had represented in Court certain interests which successfully challenged the validity of the Communist Party Dissolution Act.[3] When the Government brought down the Constitution Alteration (Powers to deal with Communists and Communism) Bill to establish the constitutional position, Dr. Evatt, on rising to speak on July 10 to the second reading, was challenged by Mr. W. C. Wentworth (Liberal member for Mackellar) raising a point of order that Dr. Evatt had appeared professionally in the Court on the subject matter of the Bill, and was, therefore, not entitled to speak.

Mr. Speaker Cameron upheld the point and ruled that Dr. Evatt was debarred from speaking or voting on the subject.

The position was relieved by the Leader of the House (Hon. Eric J. Harrison) moving the suspension of the Standing Orders to set aside the applied disability. This motion was agreed to on the voices.[4]

Australia: Federal: House of Representatives (Delegation from the House of Commons, Westminster—Presentation of Mace).[5]—On November 29, in the House of Representatives, Mr. Speaker announced that he had received the following letter from the Speaker of the House of Commons, Westminster:

8th November, 1951.

MY DEAR MR. CAMERON,

I am sending this letter by the hand of the Rt. Hon. Richard Law, the Leader of the Delegation that has been entrusted with the very pleasant task of making the formal presentation of the Mace which by direction of His Majesty is being presented on behalf of the House of Commons to the Commonwealth House of Representatives.

I am very glad that one of my first duties on my election as Speaker of the House of Commons is to be associated with this gift which is being made to mark the Jubilee of the Commonwealth Parliament.

I recall with pride that the Chair in which I preside over the House of Commons was presented by Australia.

My predecessor had the opportunity of welcoming you and other Speakers of Commonwealth Legislatures when the new Chamber of the House of Commons

[1] 1950-51 VOTES, 323. [2] XIV. 115. [3] Act No. 16 of 1950.
[4] Contributed by the Clerk of the House of Representatives.—[ED.]
[5] The report of these proceedings has been drawn up by extract from the VOTES (No. 49) and from the *Hansard* of that date, published in a specially prepared document kindly supplied by F. C. Green, M.C., the Clerk of the House of Representatives.—[ED.]

at Westminster was opened. I sincerely hope that it will fall to me to welcome you at Westminster again during my own tenure of the Chair.

Yours sincerely,
W. S. MORRISON,
Speaker.

The Serjeant-at-Arms, from the Bar, reported to Mr. Speaker the presence of a Delegation sent by the Commons House of the Parliament of Great Britain and Northern Ireland to present a Mace to this Honourable House. Thereupon Mr. Speaker with the concurrence of the House directed that the Delegation be invited to enter the Chamber and to be received at the Table.

And the Delegation, having entered the Chamber, and having been announced as follows:

The Right Honourable Richard Kidston Law, M.P.;
The Right Honourable David Rhys Grenfell, M.P.;
Mr. Joseph Grimond, M.P.;
accompanied by Mr. T. G. B. Cocks, O.B.E., Senior Clerk;

were provided with seats on the Floor of the House at the foot of the Table.

Mr. Speaker said:

Gentlemen of the House of Commons, I welcome you to the House of Representatives of the Commonwealth of Australia on this your jubilee mission to us. I invite you, Mr. Law, to address the House.

The right hon. gentleman then, on behalf of the House of Commons and the people of the United Kingdom, asked the House of Representatives to accept the gift.

Having concluded his Address, Mr. Law, supported by the other members of the Delegation, presented the Mace to the House by giving it into the charge of the Serjeant-at-Arms. And, the old Mace having been taken away, the new Mace was laid on the Table.

At the invitation of Mr. Speaker, the Right Hon. David Grenfell and Mr. Joseph Grimond in turn addressed the House.

Mr. Speaker then, on behalf of the House, acknowledged the acceptance of the Mace, in the course of which he said:

Gentlemen of the Commons House of the United Kingdom of Great Britain and Northern Ireland, on behalf of this House, I accept the Mace which you have been so kind to present to us on this occasion. It is true that it is the symbol of Royal authority in this House. Every bill which passes through this chamber begins, as do bills that pass through the House of Commons, with the statement " Be it enacted by the King's Most Excellent Majesty ", so that in the symbols of the particularly Australian character which have been engraved upon this Mace, you have expressed in very practical terms the fact that His Majesty the King is King of Australia just as he is King of Great Britain.

The Prime Minister (Rt. Hon. R. G. Menzies, C.H., Q.C.) thereupon moved:

We, the Members of the House of Representatives of the Commonwealth of Australia, in Parliament assembled, express our thanks to the Commons House of the Parliament of Great Britain and Northern Ireland for the Mace which, by direction of His Majesty the King, it has presented to this House. In accepting this generous gift, we do so with a full realization of the good wishes that accompany it and of its significance as a symbol of the freedom and the responsibility which we, as members of the British race, have inherited from the House of Commons. We ask the members of the Delegation to convey our affectionate greetings to their colleagues and we express our confidence that the highest aspirations of our peoples will ever find expression in their House.

Honourable members having expressed their approval of the Motion by rising in their places,
Mr. Speaker said:

Gentlemen, will you please accept that Resolution of this House? It will be delivered to you in writing later for transmission to your House.

The Delegation thereupon withdrew from the Chamber.

The Resolution is signed by the Speaker (Hon. Archie G. Cameron), the Prime Minister (Rt. Hon. R. G. Menzies), the Leader of the Opposition (Rt. Hon. E. V. Evatt), and the Clerk of the House of Representatives (F. C. Green, M.C.).

On February 4, 1952, in the House of Commons the Leader of the Mission to the Australian Parliament made similar report as in the case of the same Mission's visit to New Zealand (*see* Article XIII hereof), and the same action was taken both by Mr. Law and Mr. Speaker.[1]

Australia: New South Wales (Previous Question).—On September 19, 1950,[2] use of the Previous Question was made for the first time for over 40 years.

The occasion was the debate on the Address-in-Reply. An amendment by the Leader of the Opposition (to add a further paragraph) was agreed to, owing to the fact that the Government was "caught napping" on a snap vote.

A further amendment having been negatived, the Original Question, as amended, was proposed, and a member of the Government moved the Previous Question ("That that question be now put")[3] which was passed in the negative.

The Address-in-Reply in its original form was then moved and seconded again (by a different mover and seconder), and was ultimately passed.

There was no question, in this case, of the matter coming under the "same question" (rule (S.O. 187)(1)) as the Original Question had *not* been resolved in *either* the affirmative *or* negative.[4]

Australia: South Australia (Governor's Allowances).—The Constitution Act Amendment Act (Reserved), 1951, provided for allowances to the Governor for expenses by inserting new Ss. 73a and 73b in the Constitution Act as follows:

[1] 495 *Com. Hans.* 5, s. 646-8. [2] 1950 VOTES, 10. [3] L.A.S.O. 181.
[4] Contributed by the Clerk of the Legislative Assembly.—[ED.]

73a. (1) In addition to the salary prescribed by section 73 of this Act, there shall be paid to the Governor—

(*a*) in respect of the whole of the financial year commencing on the first day of July, nineteen hundred and fifty-one, an expenses allowance at the rate of four thousand pounds a year;

(*b*) in respect of each subsequent financial year, an expenses allowance at an annual rate arrived at by dividing the sum of four thousand pounds by 1,657 and multiplying the quotient by the "C" Series Index Number (as hereinafter defined) for the quarter ended on the thirty-first day of March preceding the commencement of the said financial year, and by adjusting the product to the nearest multiple of fifty pounds.

(2) the said expenses allowance shall—

(*a*) accrue due from day to day;

(*b*) be apportionable in point of time; and

(*c*) be paid monthly by the Treasurer out of the general revenue of the State: Provided that the allowance in respect of the period between the thirtieth day of June nineteen hundred and fifty-one and the passing of the Constitution Act Amendment Act (No. 2), 1951, shall be paid in one sum as soon as convenient after the passing of the said Act.

(3) Whenever in case of the death, incapacity, removal, or departure from the State of the Governor, the Government of the State is administered during any period by the Lieutenant-Governor, or any other person appointed for the purpose by His Majesty the King, the Treasurer may direct that the whole, or such part as in the circumstances he deems just, of the expenses allowance which would otherwise have been payable in respect of that period to the Governor, shall be paid to the Lieutenant-Governor or other person administering the Government of the State.

(4) The expenses allowance payable under this section shall be in addition to any salary or other payment to which the Governor is entitled under any other enactment.

(5) In this section the expression "'C' Series Index Number" means the quarterly retail price index number for Adelaide as shown in the statistical publication prepared by the Commonwealth Statistician and entitled "Retail Price Variations—The All Items ('C' Series) Index".

73b. This Act, without further appropriation, shall be sufficient authority for the payment from year to year by the Treasurer out of the General Revenue of the State, of the salary of the Governor, and of the expenses allowance of the Governor, and of any money payable to the Lieutenant-Governor or any person administering the Government of the State, as provided for in this Part.[1]

Australia: South Australia (Ministers' Salaries).[2]—The Constitution Act Amendment Act (No. 4) of 1951 amended S. 65 of the Constitution Act by striking out "£10,750" (sub-section (3)) and inserting in lieu thereof "£14,250".[3]

Australia: South Australia (Delegated Legislation).[4]—The following amendments to Joint Standing Orders 20 and 23 were adopted by both Houses in 1951. These amendments, which repealed J.S.O.'s 20 and 23, were authorized by the Constitution Act Amendment Act[5] and are as follow:

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

[2] *See also* JOURNAL, Vol. XVI. 56. [3] Contributed by the Clerk of the Parliaments and Clerk of the House of Assembly.—[ED.]

[4] *See also* JOURNAL, Vols. VI. 55; VII. 58; XIII. 186. [5] Act. No. 38 of 1950.

1. J.S.O. 20 is amended by adding at the end thereof the following passage:

For the purpose of this Order an ex-member of a House who remains a member of the Committee by virtue of Joint Standing Order No. 23 shall, while he is a member of the Committee, be deemed to be a member of the House which appointed him to the Committee.

2. J.S.O. 23 is repealed and the following Joint Standing Order substituted in its place:

23. Every member of the Committee shall, whether or not he has ceased to be a member of Parliament, hold office as a member of the Committee until the House by which he was appointed appoints his successor or pursuant to Joint Standing Order No. 22; provided that this order shall not prevent the resignation or lawful removal from office of any member.[1]

Australia: South Australia (Office of Clerk of the 2 Houses: Age Limit).[2]—During the passage of an amending Public Service Bill an amendment was agreed to, fixing the retiring age of the Clerks at 65—the same as in the Public Service. Previously there was no age limit. Those over 65 at the time of the passing of the Act are to retire at the expiration of the present Parliament on March 31, 1953.[3]

Union of South Africa (Constitutional: Separate Representation of Voters' Act).[4]—The following is a summary[5] of the Provisions of the Act:

A. Representation:

(1) *In the Senate.*—One member nominated by the Governor-General on the ground of his thorough acquaintance with the reasonable wants and wishes of the non-European population in the Cape Province.[6]

(2) *In the House of Assembly.*—Four members (but should number of members of House of Assembly prescribed by S. 32 of the South Africa Act be increased or decreased in future, the number of members representing the non-Europeans in the Cape Province to be proportionately increased or decreased).[7]

For the purposes of the Act the Cape Province is divided into 4 Union electoral divisions and 2 provincial electoral divisions, the quota of voters for each such division being obtained by dividing the number of persons registered in the Cape Coloured voters' list by the number of persons to be elected, and the boundaries of such divisions to be fixed in such a manner that the number of Coloured voters residing in each shall be approximately the same.[8]

Future delimitation of electoral divisions are to take place when-

[1] Contributed by the Clerk of the Parliaments and the Clerk of the House of Assembly.—[ED.]
[2] *See* JOURNAL, Vol. XIX. 295.
[3] Contributed by the Clerk of the Parliaments and Clerk of the House of Assembly.—[ED.]
[4] *See also* JOURNAL, Vols. V. 35 and 85; VI. 216; XI-XII. 56; XIV. 64; XVI. 58.
[5] Contributed by the Clerk of the House of Assembly.—[ED.]
[6] Act No. 46 of 1951, s. 7. [7] *Ib.* s. 9. [8] *Ib.* ss. 2, 6.

ever a delimitation is required to be made in terms of S. 41 of the South Africa Act[1] (9 Edw. VII. c. 9).

NOTE.—The Senators and members of the House of Assembly elected under the Act are, in addition to the numbers provided for under the South Africa Act, the Representation of Natives Act, 1936,[2] and the South-West Africa Affairs Amendment Act, 1949.[3]

(3) *In the Cape Provincial Council:* Two members represent each of the 2 provincial electoral divisions.[4]

These are in addition to Provincial Councillors provided for by South Africa Act, and the Representation of Natives Act, 1936.[5]

(4) *Board for Coloured Affairs:* Three non-European members nominated by the Governor-General and representing respectively the provinces of Natal, Orange Free State and Transvaal, 8 non-European members elected by persons whose names appear in the Cape Coloured voters' list, each Union electoral division being represented by 2 members. (Four divisions to remain notwithstanding an alteration in the number of Union electoral divisions in terms of S. 9 (3) and (4).[6]

In addition the following persons are to have the right to attend meetings of the Board and take part in deliberations, but without the right to vote, except in the case of equality of voting, when the Chairman has a casting vote:

(*a*) the Commissioner for Coloured Affairs (Chairman);
(*b*) a representative of the Department of Social Welfare;
(*c*) a representative of the Department of Labour; and
(*d*) a representative of the Cape Provincial Administration.[7]

B. Period of Membership:

The period of membership of Senators, members of the House of Assembly and of the Cape Provincial Council to be the same as under South Africa Act.[8]

Board for Coloured Affairs.—Five years from date of election or appointment or for unexpired period in case of a member nominated or elected to fill a vacancy.[9]

C. Remuneration:

For the members of the Senate, the House of Assembly and for the Cape Provincial Council the remuneration to be the same as under South Africa Act as amended.[10]

The remuneration for the Board for Coloured Affairs to be determined by the Minister by regulation.[11]

D. Qualifications and Disqualifications:

For membership of the Senate and the House of Assembly these are the same as under the South Africa Act as amended and in re-

[1] *Ib.* s. 6(8).
[2] No. 12 of 1936.
[3] No. 23 of 1949; Act No. 6 of 1951, ss. 7 & 9.
[4] Act No. 46 of 1951, s. 11(1).
[5] *Ib.* s. 11(2).
[6] *Ib.* ss. 14 & 15.
[7] *Ib.* s. 14(4).
[8] *Ib.* ss. 8, 10 and 12.
[9] *Ib.* s. 16.
[10] *Ib.* ss. 8, 10 and 12.
[11] *Ib.* s. 19.

spect of the Cape Provincial Council the same as before, save that in regard to the Senate 5 years and the House of Assembly and the Cape Provincial Council 2 years' residence within such Province is an additional requirement and that persons qualified to vote for the election of members of such Council in terms of the Representation of Natives Act, 1936, are not qualified for election as members thereof.[1]

In respect of the Board for Coloured Affairs, the 3 nominated non-European members must comply with the provisions of paragraphs (*a*), (*b*), (*c*) and (*d*) of S. 4 (1) of the Electoral Consolidation Act, 1946.[2] In addition, such members must have resided for a period of 2 years immediately prior to their appointment in the respective province they are nominated to represent and must continue to reside therein.

Any person qualified to be registered in the Cape Coloured voters' list who has resided in the Cape Province for a period of 2 years immediately prior to election, is eligible for election to the Board.[3]

E. Rights and Duties:

For the Senate and the House of Assembly these are the same as under the South Africa Act, save that in respect of the latter, and of the Provincial Council members, they have not the right to vote at the election of Senators under the South Africa Act.[4]

The functions of the Board for Coloured Affairs are:

(*a*) to advise the Government on economic, social, educational and political matters affecting the interests of non-Europeans;

(*b*) to make recommendations to the Government in regard to projects calculated to serve the best interests of non-Europeans;

(*c*) to act as an intermediary and means of contact and consultation between the Government and the non-Europeans; and

(*d*) to carry out such statutory or other administrative functions as may be assigned to it by the Governor-General.[5]

F. Commissioner for Coloured Affairs:

The Act creates the office of Commissioner for Coloured Affairs, which falls under the direction of the Minister of the Interior. As Chairman of the Board of Coloured Affairs, the Commissioner has no deliberative vote, but a casting vote in case of an equality of voting.[6]

G. Non-European Voters in Natal:

Those registered as voters at the commencement of the Act continue to be so registered as long as they retain the required qualifications and remain resident in the Province, but no further registration of non-European voters is effected. The name of any non-European in Natal, who becomes disqualified, shall be removed from the voters' list and cannot thereafter be restored to it. This does not, however,

[1] *Ib.* s. 12. [2] No. 46 of 1946. [3] Act No. 46 of 1951, s. 14.
[4] *Ib.* ss. 8, 10(3), 12(3). [5] *Ib.* s. 18. [6] *Ib.* 14(4).

affect the right of any non-European to be registered in the Cape Coloured voters' list or of any native to be registered in the Cape native voters' roll.[1]

The following is an extract from the Minutes and Votes of the two Houses in regard to the proceedings on the Bill:

IN THE HOUSE OF ASSEMBLY:

On March 8,[2] the Minister of Interior (Dr. the Hon. T. E. Dönges) moved for leave to introduce a Bill:

to make provision for the separate representation in Parliament and in the Provincial Council of the Province of the Cape of Good Hope of Europeans and non-Europeans in that Province, and to that end to amend the law relating to the registration of Europeans and non-Europeans as voters for Parliament and for the said Provincial Council: to amend the law relating to the registration of non-Europeans and Natives in the Province of Natal, as voters for Parliament and for the Provincial Council of Natal; to establish a Board for Coloured Affairs, and to provide for matters incidental thereto.

The Leader of the Opposition (Hon. J. G. N. Strauss), on a question of Order, asked Mr. Speaker:

Whether the proposed Bill did not in terms of Ss. 35 and/or 152 of the South Africa Act require to be passed by a Joint Sitting of both Houses of Parliament convened by the Governor-General by Message to both Houses under Ss. 58 and 152 of the South Africa Act in that it embodies as a principle thereof provisions which—

(i) seek to disqualify persons in the Province of the Cape of Good Hope who under the laws existing in the Colony of the Cape of Good Hope at the establishment of Union are or may become capable of being registered as voters from being so registered in the Province of the Cape of Good Hope by reason of their race or colour only;

(ii) seek to remove from the register persons registered as voters in the Cape of Good Hope and Natal by reason only of a disqualification based on race or colour, thereby infringing the provisions of sub-section (2) of S. 35 of the South Africa Act which said section cannot be amended or repealed save in the manner laid down in S. 152 of the South Africa Act; and whether, therefore, the Motion for leave to introduce the Bill should not be disallowed.

The Leader of the Opposition, Ministers and other members then addressed Mr. Speaker on the question of Order on March 8.

Debate on the Motion was then adjourned to March 9,[3] when Mr. Speaker said that he would give a considered Ruling on the question of Order raised, at a later stage, after which the debate was adjourned.

Debate was resumed on April 11,[4] when Mr. Speaker, after reciting the Motion and the question of Order, gave his Ruling (covering 10 pp. of the VOTES) of which the following is a résumé:[5]

Before dealing with the 3 main contentions advanced by the Leader of the Opposition in his speech, Mr. Speaker reminded the

[1] *Ib.* s. 13. [2] 1951 VOTES, 281; 74 *Assem. Hans.* 2585.
[3] 1951 VOTES, 288; 74 *Assem. Hans.* 2722. [4] 1951 VOTES, 407; 75 *Assem. Hans.* 4201. [5] Kindly supplied by the Clerk of the House of Assembly.—[ED.]

House that a Speaker's functions and duties were in no way identical with those of a judge in a court of law who had to apply the law to the facts.

He then dealt with the third contention first, namely that failure to observe the special procedure laid own in Ss. 58 and 152 of the South Africa Act (9 Edw. VII. c. 9) would be contrary to law. Mr. Speaker indicated that while it was not part of his duties to give a judicial decision on this issue he must certainly satisfy himself that the House was competent to proceed with the Bill, and that the actual problem for decision was whether, if the Bill did fall within the scope of S. 35 of the South Africa Act, Parliament was still bound by the restrictions imposed upon it by the "entrenched" sections.

After a brief survey of the changes in the legislative powers of Parliament brought about by the Statute of Westminster in 1931 and the Status of the Union Act in 1934 (No. 69), he made an exhaustive examination of views expressed by constitutional authorities on the subject.

Mr. Speaker then dealt with the second contention, namely, that certain precedents required the observance of the procedure laid down by the "entrenched" sections.

He rejected the argument that the Resolution regarding the observance of these sections adopted by the House on April 22, 1931,[1] when considering the Reports of the Imperial Conference, was binding on the Speaker as a rule of procedure, and pointed out that if it had any continued authority it would be annulled by the adoption of the Motion before the House.

In regard to Speaker Jansen's Ruling of 1934,[2] on the observance of the "entrenched" sections he stated that it must be assumed from the Stratford judgment[3] in the *Ndlwana* case that Mr. Speaker Jansen was then prepared to accept the guidance of the Appeal Court.

Mr. Speaker further observed that, while he considered it the duty of every Speaker who is concerned about maintaining the Parliamentary tradition to seek to be guided by the decisions of his predecessors, he found that previous Speakers had in their discretion departed from existing practice and established new precedents under changed circumstances.

Coming to the first of the 3 contentions, namely, that the Bill falls within the scope of S. 35 (and that accordingly the procedure of the "entrenched" sections must be followed), he stated that this was a question of legal construction and interpretation which he at that stage did not feel called upon to decide.

The question which he had to decide, however, was whether the Bill could only be considered and passed by a Joint Sitting of both Houses.

Mr. Speaker then concluded that as the weight of authority favoured the view that Ss. 35 and 152 of the South Africa Act

[1] 1931 VOTES, 530.
[2] *See* JOURNAL, Vol. VI. 216.
[3] 1934 VOTES, 355, 376, 498, 506.

" no longer involve any limitation whatsoever upon the legislative competence of Parliament; that they can be repealed or amended by Parliament in the ordinary way without compliance with the requirements of S. 152 and that a Bill within the scope of S. 35 can be passed in the ordinary way without complying with the requirements of that section "

and as the Appellate Division in the *Ndlwana* case in 1937 had unanimously confirmed that Parliament was unfettered in its procedure, he was not prepared to disallow the Motion before the House.[1]

The House thereupon proceeded to debate the Motion of the Minister of the Interior asking for leave to introduce the Bill and debate was, on the Motion of the Leader of the Opposition, adjourned.

On April 16,[2] debate on the Motion for leave was resumed, during which the Leader of the Opposition moved, seconded by Mr. du Toit, the following amendment:

To omit all the words after " That " and to substitute:

This House declines to consider, otherwise than at a Joint Sitting of both Houses of Parliament, the Bill for Separate Representation of Europeans and non-Europeans, which, in its opinion, constitutes a breach of the rights safeguarded by entrenchment at the time of Union because, *inter alia*:

(*a*) it is subversive of the solemn compact which led to the establishment of Union on the understanding and in the belief that the safeguards therein provided would be scrupulously observed;

(*b*) it is a repudiation of the pledges and assurances given by the leaders of the people that the safeguards of the Constitution would be steadfastly maintained;

(*c*) it is a breach of a moral obligation which is calculated to bring the good name and honour of South Africa into disrepute and to create misgivings both at home and abroad as to the stability of our political institutions; and

(*d*) it is in conflict with the resolutions of both Houses of Parliament adopted on April 22 and on May 8, 1931, to the effect that nothing contained in the Statute of Westminster shall derogate from the provisions of the entrenched sections of the South Africa Act.

The hon. member for Johannesburg City (Mr. J. Christie) then moved as a further amendment, seconded by Mr. Davidoff, to omit all the words after " That " and to substitute:

As this House is of opinion that the Bill for separate representation of Europeans and non-Europeans, which seeks to remove the Coloured voters from the common roll, constitutes a disqualification and a diminution of their rights, is contrary to the spirit of the South Africa Act as enshrined in Ss. 35 and 152 of the said Act, is in conflict with the safeguards and solemn undertakings given at the time of Union, and, if passed, will perpetuate racial differences in the Union and retard its development, it expresses its unequivocal opposition to such legislation and accordingly refuses leave to introduce the aforementioned Bill.

At 6.30 p.m., Business was suspended in accordance with Sessional Order and debate was resumed at 8 p.m., which continued until the interruption of Business at 10.26 p.m.

Petition.—On April 17,[3] the hon. member for the Cape Flats (Cap-

[1] VOTES, 417; 75 *Assem. Hans.* 4466. [2] 1951 VOTES, 418. [3] VOTES, 453.

tain R. J. du Toit) presented a Petition from B. H. M. Brown and 100,000 other registered voters praying for the rejection of any measure designed to remove the Coloured Voters of the Cape Province from the common voters' roll.

On the same day[1] debate was resumed on the Bill, when the following further amendment to the Motion was moved by the hon. member for Cape Eastern (Mrs. Ballinger): to omit all words after "That" and to substitute:

this House having regard to the cultural and economic progress of the non-European community since Union and the urgent need to improve relations between them and the European population by granting them adequate scope for their legitimate political aspirations and concerned to strengthen the democratic principle in this country declines to grant leave for the introduction of the Representation of non-Europeans Bill as constituting a drastic and unwarranted diminution of the political rights of the Coloured People, and urges the extension of the franchise rights exercised by non-European males in the Cape at the time of Union to non-European males and females in all Provinces of the Union, with the provision of the right to stand for and to be elected to Parliament and the Provincial Councils.

Debate continued until the interruption of Business at 10.25 p.m.

On April 18,[2] it was Resolved on the Motion of the Prime Minister: That the proceedings on the Motion for leave to introduce the Bill be not interrupted under the Sessional Order if under consideration at 10.25 p.m. that day, after which debate on the Motion was resumed.

At midnight, on April 19,[3] Mr. Speaker put the Question that all he words after "That" proposed to be omitted stand part of the Motion. (Ayes, 77; Noes, 65). The amendments therefore dropped and the original Motion was put and carried (Ayes, 77; Noes, 65).

Question: That the Bill be now read 1 *R.* put and agreed to (Ayes, 77; Noes, 65).

The Minister of the Interior then moved:[4] That 2 *R.* of the Bill be taken on Wednesday, to which an amendment was moved by the Hon. H. G. Lawrence, to omit Wednesday and substitute April 30.

Debate continued.

Dr. van Nierop then moved the Closure, which was agreed to (Ayes, 76; Noes, 64).

Question was then put that "Wednesday" stand part of the Motion which was agreed to (Ayes, 76; Noes, 64).

The original Motion was then put and agreed to and the Debate was adjourned.

On April 20,[5] the Minister of Defence for the Minister of the Interior laid on the Table the Explanatory Memorandum on the Bill.

Guillotine Motion.—On April 24,[6] the Minister of Finance moved: That the time for the proceedings on the Separate Registration of Voters Bill be allotted as follows:

[1] VOTES, 454; 75 *Assem. Hans.* 4582.
[2] VOTES, 460; 75 *Assem. Hans.* 4689.
[3] VOTES, 461; 75 *Assem. Hans.* 5056.
[4] VOTES, 465; 75 *Assem. Hans.* 5081.
[5] VOTES, 472.
[6] VOTES, 489; 75 *Assem. Hans.* 5263.

(*a*) 17 hours for Second Reading;
(*b*) 12 hours for Com. stage;
(*c*) 4 hours for Report stage;
(*d*) 6 hours for Third Reading.

(1) *Second and Third Readings.*—At the conclusion of the respective periods allotted Mr. Speaker shall interrupt Business and allow the Minister in charge of the Bill to reply before putting the question.

(2) *Committee Stage.*—At the conclusion of the period allotted the Chairman shall interrupt Business and any amendments (other than amendments proposed by the Minister) shall drop. The Chairman shall then put forthwith, without debate, the question before the Committee and any amendments which have been 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 at the stage.

(3) *Report Stage.*—At the conclusion of the period allotted Mr. Speaker shall interrupt Business and any amendments (other than amendments proposed by a Minister) shall drop. Mr. Speaker shall then put forthwith, without debate, any amendments which have been moved or may be moved by a Minister. Mr. Speaker shall next put, without debate, the question: "That the Bill, as amended, be adopted", which shall include any amendments made in Committee of the Whole House which have not been taken into consideration.

(4) *Conclusion of Stages.*—At the conclusion of each stage of the Bill the date for the next stage shall be fixed by a Minister.

(5) *Time for adjournment of House.*—When Business is interrupted at the conclusion of the period of hours allotted, the application of Sessional Orders fixing time for the adjournment of the House shall be postponed until the proceedings on the Business interrupted have been completed.

The Hon. J. G. N. Strauss then moved to omit all words after "That" and to substitute:

This House regards the Motion of the Minister of Finance as an unwarranted attack upon its honour as the highest legislative body in the country and as an invasion of its liberties and its position of responsibility to the people and therefore considers it to be its imperative duty to reject the Motion and to issue a grave warning to the country against this dictatorial curtailment of the fundamental rights and liberties of the people, which is calculated to lead to the undermining of our Parliamentary rights and privileges.[1]

After debate, the hon. member for Mossel Bay (Dr. P. G. van Nierop) moved the Closure which was agreed to (Ayes, 76; Noes, 58).

Question was then put that all the words after "That" proposed to be deleted stand part of the Motion, which was put and agreed to (Ayes, 76; Noes 58).

The original Motion was then put and agreed to (Ayes 76, Noes 58).

On April 26[2] Mr. du Toit moved: "That the Petition abovementioned be read at the Table by the Clerk of the House", which was agreed to, whereupon the Petition was read by the Clerk of the House.

[1] 1951 VOTES, 489; 75 *Assem. Hans.* 5262.
[2] VOTES, 499; 75 *Assem. Hans.* 5381.

The Minister of the Interior thereupon moved:[1] That the Bill be now read a Second Time, to which the Hon. J. G. N. Strauss moved: to omit "now" and to add at the end "this day 6 months".

Debate continued until the interruption of Business at 10.30 p.m.

Later the same day, debate was resumed on 2 *R.* of the Bill and interrupted under the Sessional Order.

On April 27[2] debate was continued until the Guillotine fell at 6.40 p.m.

On April 30,[3] upon Mr. Speaker putting the Question: That the word "now" proposed to be omitted, stand part of the Motion, the House divided (Ayes, 76; Noes, 69).

Question affirmed and the amendment dropped.

The Motion was accordingly agreed to and the Bill passed 2 *R.*

On May 8,[4] the House went into *C.W.H.* on the Bill and progress was reported.

On May 9,[5] the House resumed in Committee during which there were 13 divisions and the Guillotine fell at 9.45 p.m., the Bill being then reported with amendments.

Report Stage.—On May 11,[6] the amendments were considered, with one division, the Guillotine falling at 6.30 p.m., and the Bill as amended was adopted.

Third Reading.—On May 14,[7] the following amendment was proposed by the Leader of the Opposition to the *Q.* for 3 *R.*: to omit all words after "That" and to substitute:

> This House declines to pass the Third Reading of the Bill because, *inter alia*:
>
> (*a*) it deprives a section of the electorate of South Africa of rights which they have exercised since 1852;
>
> (*b*) it amounts to a breach of one of the fundamental moral obligations upon the strength of which the Union of South Africa came into existence;
>
> (*c*) it will undermine the honour, the leadership and the authority of the white man, and endanger white leadership in South Africa; and
>
> (*d*) it has become clear that this Bill does not represent the full implementation of the Government's policy but is merely a prelude to the ultimate complete deprivation of the political rights of the Coloured People.

The Guillotine fell at 10.3 p.m., and Mr. Speaker put the Question: That all the words after "That", proposed to be omitted, stand part of the Motion upon which the House divided (Ayes, 74: Noes, 64).

The Question was agreed to and the amendment dropped.

The Bill then passed 3 *R.* and was transmitted to the Senate for concurrence:

IN THE SENATE:

On May 16,[8] upon the Assembly Message being read, Senator the

[1] VOTES, 504; 75 *Assem. Hans.* 5496.
[2] VOTES, 508; 75 *Assem. Hans.* 561
[3] VOTES, 512; 75 *Assem. Hans.* 5688.
[4] VOTES, 537; 75 *Assem. Hans.* 610
[5] VOTES, 543; 75 *Assem. Hans.* 6223.
[6] VOTES, 575; 75 *Assem. Hans.* 646
[7] VOTES, 583; 75 *Assem. Hans.* 6529.
[8] 1951 MIN. 207; III. *Sen. Hans.* 360

Rt. Hon. G. H. Nicholls, asked for Mr. President's Ruling in the same terms as used by the Leader of the Opposition in the Assembly but with the omission of the reference to "Natal".

After debate on the Question of Order, Mr. President stated that he would give a considered Ruling at a later date.

On May 24,[1] Mr. President gave a considered Ruling (which covered 6 pp. of the Minutes) of which the following is a résumé:[2]

Mr. President stated that his Ruling would depend on the question whether in his opinion sections 35 and 152 of the Constitution,[3] the so-called "entrenched" sections, were still of full force and effect in the sense that legislation referred to in section 35 could only be validly passed at a joint sitting of the Senate and the House of Assembly with a two-thirds majority at the Third Reading, and in no other way, *i.e.* not by the two Houses sitting separately or bicamerally. He wished to point out, however, that these two sections dealt primarily with the validity of certain legislation and he was not called upon to pronounce on the validity of legislation, but as these provisions might also be considered to affect the competence of the Senate to consider at a separate sitting a Bill falling within their scope, the question was rightly submitted for his decision.

In doing so he felt he could obviously not confine himself only to the purport and meaning of 35 and 152 as enacted in 1909. Since then important constitutional developments had taken place and new laws had been enacted having an important bearing upon the powers of Parliament and consequently also of the Senate. In the first instance he wished to draw attention to the difference between the sovereign independence of a state and the sovereign legislative power of its legislature, and to point out that these two concepts need not have the same meaning. Before 1931 certain restrictions upon the independence of the Union took the form of a limitation upon its legislative powers imposed by an external legislature. These restrictions upon legislative power, being imposed by an external legislature, formed part of the restrictions upon sovereign independence. Consequently in the case of the Union it was not so easy to distinguish these two concepts entirely from each other. The Statute of Westminster, 1931, had aimed at removing these restrictions and giving the Union the status of a sovereign independent state. He referred particularly to the restriction imposed by the Colonial Laws Validity Act of 1865,[4] in terms of which a colonial law was entirely null and void insofar as it might be repugnant to an Act of the British Parliament. He did not agree with the submission that the repeal of this Act had had no effect upon the Constitution, and was not satisfied that its repeal could be disregarded. It seemed to him more acceptable that its repeal removed a restriction which would have precluded

[1] MIN. 229; IV. *Sen. Hans.* 4259.
[2] Kindly contributed by the Clerk of the Senate.—[ED.]
[3] 9 Edw. VII. c. 9. [4] 28 & 29 Vict. c. 63.

an amendment of section 35 or 152 or any action by Parliament which would have been in contravention of these sections. The Statute of Westminster had expressly declared the Parliament of the Union competent to repeal or amend any British Act in force in the Union. This power was, insofar as the Union was concerned, granted without any reservation or limitation, and no exception was made in respect of any section in the Constitution.

The next Act relevant to this question was the Status of the Union Act, 1934,[1] which had declared the Union Parliament to be the sovereign legislative authority in and over the Union. He felt that had Parliament still been subject to any limitations, notwithstanding the repeal of the Colonial Laws Validity Act and the additional powers which had been conferred, it would have been inappropriate and incorrect to refer to a sovereign, *i.e.* a supreme legislative authority, and he pointed out that this Act did not deal with the sovereign constitutional status of the Union as a state, but specifically with Parliament as a legislature.

He then proceeded to deal with the 1937 Appeal Court case of Ndlwana *v.* Hofmeyr.[2] On the question whether the Court had any power at the present time to pronounce upon the validity of an Act of Parliament duly promulgated and printed and published by proper authority, he quoted from the judgment: "Parliament's will, therefore, as expressed in an Act of Parliament cannot now in this country, as it cannot in England, be questioned by a Court of Law whose function it is to enforce that law, not to question it. In the case of subordinate legislative bodies Courts can of course be invoked to see that a particular enactment does not exceed the limited powers conferred. It is obviously senseless to speak of an Act of a sovereign law-making body as *ultra vires*. There can be no exceeding of power when that power is limitless." As far as he could see the Court found explicitly that the reason, and the only reason, for its refusal to exercise the testing right was the unlimited legislative power of Parliament, in fact that Parliament was no longer bound by the restrictions embodied in 35, 55 and 152.[3] Had these restrictions still been of full force and effect the legislative powers of Parliament could not in his opinion have been described in this judgment as "unlimited", and the Court would not have been able to lay down that there could no longer be any question of the invalidity of an Act of Parliament.

It had been submitted that in using the word "Parliament" a distinction should be made between Parliament with the Senate and the House of Assembly functioning as separate bodies and Parliament with the two Houses functioning as a joint body. What Parliament might do in one form it could not do in another, although Parliament in the sum total of both forms possessed unlimited sovereignty.

[1] No. 69.
[2] *See* JOURNAL, Vols. V. 86, 89; VI. 216-218.
[3] 9 Edw. VII. c. 9.

Were Parliament in one form to pass an Act which should in accordance with 35 be passed in another, it would not in respect of such Act be Parliament and such Act would not be an Act. This he pointed out was the essence of the argument advanced in 1937 before the Appeal Court. To this the Court had replied: "The answer is that Parliament, composed of its three constituent elements, can adopt any procedure it thinks fit; the procedure expressed or implied in the South Africa Act is, so far as Courts of Law are concerned, at the mercy of Parliament like everything else." This placed him in the position where he could not agree with Honourable Senators who wished him to rule this Bill out of order without coming into conflict with the findings of the Appeal Court, the highest judicial body in the Union. He did not wish to suggest that the President should under all circumstances be bound by a decision of the Appeal Court, but he would hesitate to differ from such decision when it was not clear to him that the Appeal Court was wrong.

He then referred to 19 of the Constitution containing a definition of Parliament as consisting of the King, a Senate and a House of Assembly, the Senate and the House of Assembly being described as separate bodies. In this definition he found no reference to a joint body. Wherever the word "Parliament" appeared in the Constitution, it referred to its three constituent elements acting separately, and he could find no provision in the Constitution where a joint sitting was referred to as Parliament. On the contrary, whenever and as often as a joint sitting was mentioned it was explicitly provided that a Bill passed at such joint sitting should be deemed to have been duly passed by both Houses. If a joint sitting had also been included in the ordinary meaning of the word "Parliament", he found it difficult to understand why it was considered necessary to repeat again and again this provision that an Act of a joint sitting is as valid as an Act of a separate sitting. It seemed to him therefore that it was only in an entirely exceptional sense that the King and this single joint body might be described as Parliament. This he felt added weight to the contention that the Statute of Westminster and the Status Act when referring to Parliament, its powers and its sovereignty, must be regarded as referring to the powers and sovereignty of Parliament with the Senate and the House of Assembly sitting separately, in the same way as the Constitution in dealing with Parliament referred to Parliament with the two Houses sitting separately. It must follow then that these Acts vested full sovereignty in Parliament with the Senate and the House of Assembly sitting separately, and that Parliament might therefore at such separate sittings also enact what it formerly could only have enacted at a joint sitting.

He had been urged to give effect to the Resolution of 1931 in which the Senate had supported the view that the proposed Statute of Westminster would not detract from the entrenched provisions of

the Constitution, and in which it had on that assumption agreed to request the British Parliament to proceed with that Statute. The opinion expressed by the House on that occasion was not however in accord with the findings of the *Ndlwana* case and it was therefore difficult to regard that opinion as still being well founded and to give effect to it.

The same applied to previous Rulings in this House and in Another Place delivered prior to the *Ndlwana* case. Precedents could create established parliamentary usage, but it did not mean that they should necessarily be followed when important and new circumstances arose.

He then referred to a number of learned writers who had expressed opinions on this question, and pointed out that the majority of them had arrived at the same conclusion as the Appeal Court or identified themselves with it.

The point had also been raised that Parliament by amending 35 of the Constitution in the passing of the Representation of Natives Act in 1936 had thereby acknowledged the efficacy of that section, and that it therefore still formed part of the law of the land. A sovereign Parliament, however, could scarcely be bound by its own previous enactments, and he was accordingly not convinced that this consideration in any way affected the matter.

By reason of all these considerations he was forced to the conclusion that the entrenched sections of the Constitution were no longer at full force and effect in the sense that they precluded the House from considering the Bill at a separate sitting. In view of this he felt it was unnecessary for him to consider the further question whether the Bill fell within the provisions of the said sections. Even if it did the House would in his opinion still be competent to deal wth it at a separate sitting.

The Bill was then, by direction of Mr. President, read a First Time.[1] The Second Reading took place on May 25,[2] when an amendment to the Question was proposed by Senator Clarkson, to delete the word "now" and to add at the end of the Question: "this day 6 months", the debate being continued on May 28.

Motion.—On May 29[3] Senator the Rt. Hon. G. H. Nicholls moved:

That this House dissents from the Ruling given by Mr. President on the 24th instant on the point of Order raised on the 16th instant dealing with the competence of the Senate to receive a Message from the honourable the House of Assembly transmitting the Separate Representation of Voters' Bill for its concurrence.

After debate, the Minister of Native Affairs (Senator Dr. the Hon. H. F. Verwoerd) moved to delete all words after "That" and to substitute:

This House expresses its complete agreement with Mr. President's Ruling on the Separate Representation of Voters' Bill and deprecates the attempt to

[1] MIN. 240; III. *Sen. Hans.* 4403.
[2] MIN. 229-235.
[3] MIN. 247; III. *Sen. Hans.* 4564.

derogate from the established status of Parliament as the supreme and sovereign legislative authority in and over the Union of South Africa. This House further affirms that, in view of the recognized competence of Parliament composed of its 3 constituents to adopt any procedure it deems fit, it approves of the procedure being followed in the passage of this Bill.

After debate, Question: "That the words proposed to be deleted stand part of the question" put and carried (Contents, 18; Not-Contents, 24).

Question: "That the words proposed by the Minister of Native Affairs be there inserted" put and agreed to (Contents, 24; Not-Contents, 18).

The original Question as amended put and agreed to (Contents, 24; Not-Contents, 18).

Second Reading.—On May 29,[1] 30[2] and 31[3] the debate was continued and upon Mr. President putting the Question: "That the word 'now' stand part of the Question" the House divided (Contents, 20; Non-Contents, 15), and the Bill passed 2 *R.*

C.W.H.—On June 1[4] and 4[5] the House was in Committee on the Bill during which there were 12 divisions and the Bill was reported with amendments. These were considered on June 5,[6] when they were adopted.

3 *R.*—On June 6[7] an amendment was proposed by Senator the Rt. Hon. G. H. Nicholls, to delete all the words after "That" and to substitute the words:

this House declines to pass the Third Reading of the Separate Representation of Voters' Bill in that—

(*a*) it constitutes a repudiation of the entrenched sections of the Constitution as well as a breach of faith in the solemn undertaking given to the Coloured community of the Union; and

(*b*) it indicates a deliberate policy which is calculated to undermine the sanctity of the South Africa Act under which the four South African States came together to form a Union.

After debate, on the Question: "That the words proposed to be deleted stand part of the Question" being put, the House divided (Contents, 21; Not-Contents, 16) and the Bill passed 3 *R.* and was transmitted to the Assembly for concurrence in the amendments, which was notified in a Message on June 12.[8]

R.A.—This was announced in both Houses on June 18.[9]

Union of South Africa: Constitutional (Suppression of Communism: Legislators).[10]—Certain amendments were made to the provisions of the Suppression of Communism Act 1950[11] by the Suppression of Communism Amendment Act, No. 50 of 1951, and the following provisions which directly affect members of Parliament, Provincial Councils and the Legislative Assembly of South-West

[1] MIN. 248; III. *Sen. Hans.* 4640.
[2] MIN. 256; III. *Sen. Hans.* 4836.
[3] MIN. 263; IV. *Sen. Hans.* 5022.
[4] MIN. 259; III. *Sen. Hans.* 4933.
[5] MIN. 269; IV. *Sen. Hans.* 5290.
[6] MIN. 275; IV. *Sen. Hans.* 5430.
[7] MIN. 291.
[8] MIN. 313; VOTES, 846.
[9] MIN. 251; III. *Sen. Hans.* 4697.
[10] *See* JOURNAL, Vol. XIX, 78.
[11] No. 44.

Africa are substituted for those in the Act of 1950 by the Act of 1951:—

(*a*) If, in the case of a Senator, a committee of the Senate or, in the case of a member of the House of Assembly or a Provincial Council or the Legislative Assembly of South-West Africa, a committee of the House of Assembly reports to the Senate or the House of Assembly—

(i) that his name appears on a list in the custody of a designated officer and there are no circumstances which would justify the removal of his name from such list; or

(ii) that he has been convicted of certain offences under the principal Act or is a communist; or

(iii) that he is or was a member, etc., of the Communist Party or professed to be a communist or furthered the objects of communism,

—the Minister may, if the report is approved by the appropriate House and the House does not recommend that no action be taken, notify him and also the President or the Speaker or the respective Chairman that such member shall cease to be a member and as from that date he shall be deemed to be incapable of sitting in terms of Ss. 53 and 72 of the South Africa Act and his seat shall become vacant.

(*b*) No person in respect of whom such a notice has been issued shall be capable of being chosen as a member of either House, a Provincial Council or the Legislative Assembly except with the approval of the Senate or the House of Assembly, as the case may be.[1]

Union of South Africa (Representation of Natives Act, 1936).[2]—Section 18 of the Bantu Authorities Act, 1951,[3] amends the Representation of Natives Act 1951 by abolishing the Natives Representative Council and s. 19 consequentially amends the Act of 1936 in respect of the provisions of such last-mentioned Act as given in the Schedule to the Act of 1951.[4]

Union of South Africa (Pension to Governor-General or Widow).—The South Africa Act Amendment Act 1951[5] by s. 10 *bis* amends s. 9 of the South Africa Act 1909[6] by making provision for the payment of a pension to a Governor-General on retirement of £2,000 *p.a.*, w.e.f., the day following that upon which he vacated office or April 1, 1951, whichever is the later date.

A pension of £1,000 *p.a.* is also awarded in similar terms to the widow (unless remarried) of a Governor-General whose marriage to him took place before the date of his vacation of office. No pension, however, is payable under this section to any person who is, in terms of any other law, entitled to a pension at a rate equal to, or higher than, the rate prescribed in respect of that person.

Also, where a pension at a lower rate is under any other law payable to a person under this section, the pension governed by such other law is discontinued, so long as the person is entitled to a pension.[7]

[1] Contributed by the Clerk of the House of Assembly.—[ED.]
[2] No. 12. [3] No. 68. [4] Contributed by the Clerk of the House of Assembly.—[ED.] [5] No. 66. [6] 9 Edw. VII. c. 9.
[7] Contributed by the Clerk of the House of Assembly.—[ED.]

Union of South Africa: House of Assembly (Salaries and Allowances of Ministers).—According to the Estimates of Additional Expenditure for 1951-52, the salary of the Prime Minister was increased from £4,000 to £5,000 *p.a.*, and the salaries of Ministers from £3,000 to £4,000 *p.a.*, with effect from April 1, 1951.

In a footnote to the Vote it is stated that £1,200 of the salary of each Minister is regarded as a reimbursive allowance.[1]

Union of South Africa (Salaries of President and of Speaker).—In terms of s. 2 of the South Africa Act Amendment Act, 1951,[2] the salaries of the President of the Senate and the Speaker of the House of Assembly are increased from £2,000 to £2,400 and £2,500 to £3,000 *p.a.*, respectively, w.e.f. April 1, 1951.

The Act also provides that £960 and £1,200 of each salary is to be regarded as payment made to meet expenditure incurred by Mr. President and Mr. Speaker respectively in connection with their official duties.[3]

***Union of South Africa (Allowances to Senators & M.P.s).**[4]—Section 2 of the South Africa Act Amendment Act 1951[5] amends s. 56 of the South Africa Act 1909[6] by providing for an increase of the allowances payable to Senators and M.P.s from £1,000 to £1,400 *p.a.* Provision is also made for payments to Senators and M.P.s of £700 to be regarded as payments made to meet expenditure incurred by them in connection with their official duties.

***Union of South Africa (Additional Allowance to the Leader of the Opposition, House of Assembly).**[7]—Section 2 of the Act of 1951 above mentioned increases the additional allowance payable to the Leader of the Opposition from £1,000 to £1,300 *p.a.*, with £380 as payment to meet official expenses as above.[8]

***Union of South Africa (Remuneration and free facilities to Members of Both Houses).**[9]—The changes authorized by law in respect of absence have now brought the summary up to date in the following tabular statement:

Year.	*No. and short Title of Act.*	*Amount payable to Members.*	*Deductions.*	*Remarks.*
1910	South Africa Act, 1909.	£400 *p.a.*, from date of taking seat.	£3 *p.d.* for each day of absence.	
1916	Act. No. 21 of 1916, Payment of Members of	£400 *p.a.*, from date of election	£3 *p.d.* for absence in excess of 15 days	In 1918 under 4th Report of S.R. and O.

[1] Contributed by the Clerk of the House of Assembly.—[ED.]
[2] No. 66. [3] Contributed by the Clerks of the Senate and House of Assembly respectively.—[ED.]
[4] *See* JOURNAL, Vols. IV. 22; VII. 62; VIII. 127; IX. 41; XV. 81, 2; XVII. 47.
[5] No. 66. [6] 9 Edw. VII. c. 9. [7] *See also* JOURNAL, Vol. XIV. 229.
[8] Contributed by the Clerk of the House of Assembly.—[ED.]
[9] *See also* JOURNAL, Vols. VII. 62; VIII. 127; IX. 41; XV. 80; XVII. 47; XVIII. 94.

Year.	*No. and short Title of Act.*	*Amount payable to Members.*	*Deductions.*	*Remarks.*
	Parliament Act.		during an ordinary Session.	Committee travelling facilities granted to members' families; since extended to include air travel.
1920	Estimates of Expenditure and Appropriation Act.	£400 *p.a.* plus £200 *p.a.* special temporary allowance.	do.	
1921	do.	£400 *p.a.* plus £137 10s. special temporary allowance.	do.	
1922	do.	£400 *p.a.* plus £100 *p.a.* special temporary allowance.	do.	
1923 1924 1925	do.	do.	do.	
1926	Act No. 51 of 1926, Payment of Members of Parliament Act.	£700 *p.a.*	£6 *p.d.* for absence in excess of 15 days.	
1932	Act No. 21 of 1932, Salaries Reduction Act, sec. 4.	£630 *p.a., i.e.,* £700 *p.a.* less 10 p.c. temporary deduction.	£2 *p.d.* for absence in excess of 30 days.	
1933 1st April	(On expiration of Act No. 21 of 1932, provisions of Act No. 51 of 1926 came into force again and were amended by Act No. 29 of 1933.)	£700 *p.a.*	£2 *p.d.* for absence in excess of 15 days.	
1935 1st Jan.	Act No. 43 of 1935, South Africa Act Amendment Act.	do.	£6 *p.d.* for absence in excess of 25 days.	
1938				By resolution of S.R. and O. Committee telephone facilities granted to members since extended.

Year.	*No. and short Title of Act.*	*Amount payable to Members.*	*Deductions.*	*Remarks.*
1939				By resolution of S.R. and O. Committee clerical assistance granted to members.
1940	Act No. 19 of 1940, Constitution (Prevention of Disabilities Act.		No deduction if absence due to serving with Union's military Forces at war.	
1945		£700 *p.a.* plus £150 special Sessional allowance.	No deduction if absence due to serving with Union's military Forces at war.	
1946		£700 *p.a.* plus £75 special Sessional allowance for period ended 31.3.46.	do.	
1946 1st April	Act No. 21 of 1946, South Africa Act Amendment Act.	£1,000 *p.a.*	do.	Additional allowance granted to Leader of the Opposition.
1951 1st April	Act No. 66 of 1951, South Africa Act Amendment Act.	£1,400 *p.a.*	do.	£700 deemed to represent payments made to meet expenditure incurred by members in connection with their official duties.

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

COMMITTEE OF SUPPLY.

Consolidated Revenue Fund.—The proceedings in Committee of Supply on the Estimates of Expenditure from the Consolidated Revenue Fund were limited to 125 hours.[2] The full time allotted was taken up.

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;

[1] *See also* JOURNAL, Vols. IX. 39; X. 56; XI-XII. 218; XIII. 77; XV. 84; XVI. 60; XVII. 47; XIX. 83.

[2] 1951 VOTES, 427.

(*c*) 4 hours for 2 *R.* of the Railways and Harbours Appropriation Bill; and
(*d*) 2 hours for 3 *R.* of the Bill.[1]

The full time allotted was taken up on the Motion to go into Committee of Supply, in Committee of Supply and on 2 *R.*; one hour of the time allotted was taken up on 3 *R.*

Bills.—Motions were adopted limiting the proceedings on the undermentioned Bills as follows:

Separate Representation of Voters' Bill:[2]
Suppression of Communism Amendment Bill:

(*a*) 3 hours (in addition to the 8 hours 17 minutes already occupied) for Committee Stage;
(*b*) 2 hours for Report Stage; and
(*c*) 2 hours for 3 *R.*[3]

On all stages of both Bills the full time allotted was occupied.[4]

South-West Africa (Constitutional Amendment).[5]—On June 1,[6] the Prime Minister (Dr. the Hon. D. F. Malan), in moving 2 *R.* of the South-West Africa Affairs Amendment Bill in the Union House of Assembly, said that the introduction of the Bill was necessary to fill in gaps which had existed since the passing of the South-West Africa Affairs Amendment Act 1949.[7] Previous to the passing of that Act, South-West Africa was completely subordinate to the Union and governed by its Proclamations.

The objects of the Bill were first, continued Dr. Malan, to bring about certainty in connection with Proclamations applicable to South-West Africa issued before the coming into force of that Act and were not subsequently overtaken either by Act of Parliament or by Ordinance of the South-West Africa Legislative Assembly.

The second object of the Bill was to provide that the power of the Union, in exceptional circumstances, to issue Proclamations should remain. When the Act of 1949 was passed, it was not thought that such power actually existed. A striking example was the devaluation of Union currency.

Other Proclamation powers of the Union Government under the Act of 1925 were in regard to Native Areas which did not come under the Legislative Assembly of South-West Africa. But, in terms of the Act of 1949, the Union was not able to issue such Proclamations directly. It was, however, now necessary to retain the Union's power of Proclamation in exceptional cases. There is, however, the usual reservation in law just as it applied to such cases in the Union, that the sovereignty of Parliament is supreme, and such Proclama-

[1] *Ib.* 198.
[2] *Ib.* 744.
[3] 1951 VOTES, 427.
[4] *See above* under Bill.—[ED.]
[5] *See also* JOURNAL, Vols. IV. 22; V. 42; VI. 59; VII. 64; IX. 42; XI-XII. 59; XIII. 85; XV. 86; XVIII. 95.
[6] *Assem. Hans.*, No. 18, 8353.
[7] No. 23 of 1949.

tions must be laid before the Union Parliament directly it meets, Parliament having power to disapprove of them within a certain period.

A third matter, not considered in the 1949 Act, was the position of Caprivi Zipfel, which, according to the Ruling that existed before 1949, was divided into 2 parts, a western part which came under South-West Africa and an eastern part which for administrative purposes was placed under the Union. It was not annexed to the Union, but just as there was a Ruling that Walvis Bay, which is Union Territory and does not belong to South-West Africa, this part was placed under the Union for administrative purposes, being inaccessible to South-West Africa.

Therefore, the Bill proposes to legalize the existing state of affairs, and as the whole of the Caprivi Strip belongs territorially to South-West Africa, it is now proposed to place the eastern section of this strip under the Union Government both for judicial and administrative purposes.

During the debate on the Bill, the hon. member for Salt River (Hon. H. G. Lawrence) raised the question of the international trusteeship of South-West Africa in terms of the Charter of the United Nations, with reference to the Resolution of the Union House of Assembly on April 11, 1947, which he read at length.[1]

The Prime Minister, in concluding the debate,[2] quoted the Union Proclamation of July 19, 1939, and the powers of the Union Government in regard to the Peace Treaty and the South-West Africa Mandate Law No. 49 of 1919.

The Bill then passed 2 *R.* and its various stages in both Houses, without amendment, becoming Act No. 55 of 1951.

India (The Constitution (First Amendment) Act, 1951).[3]—*Central Parliament.*—This Act amends the Constitution of India in several respects. Those directly affecting the Parliament or State Legislatures and their powers are as follow:

Validation of Certain Laws.—Section 3 of the Act amends Article 19 and s. 5 enacts a new Article, 31 B in regard to the validation of certain laws.

Sessions, Prorogation and Dissolution of Parliament.—Section 6 substitutes the following Article for Article 85 of the Constitution:

85. *Sessions of Parliament, prorogation and dissolution.*—(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—
(*a*) prorogue the Houses or either House;
(*b*) dissolve the House of the People.

[1] *Ib.* 8357. [2] *Ib.* 8353-8373. [3] *See also* JOURNAL, Vol. XVIII. 224-257.

India: The States (The Constitution (First Amendment) Act, 1951).—*Sessions, Prorogation and Dissolution of State Legislatures.*—Section 8 of The Constitution (First Amendment) Act, 1951, substitutes in Class A States the following Article for Article 174 in the Constitution of India:

174. *Sessions of the State Legislature, prorogation and dissolution.*—(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

(*a*) prorogue the House or either House;

(*b*) dissolve the Legislative Assembly.

Special Address by the Governor.—Article 176 is amended by providing that the Governor's Address to the Chamber, or Chambers, as the case may be, shall only be made at the commencement of the first Session after each General Election to the Legislative Assembly and at the commencement of the first Session each year. No precedence is now to be given for the debate on the Address.

President, Powers of—Scheduled Castes and Tribes.—Article 341 provides that the President may, after consultation with the Governor or Rajpramukh of a State by public notification specify who shall be deemed Scheduled Castes in relation to that State. Section 10 amends Article 341[1] by restricting the President's power in respect of A and B States.

Similarly, the same amendment is made by s. 11 in Article 342[1] by applying this power of the President to Scheduled Tribes.

Legislation.—Article 372(3) empowers the President to make any adaptation or modification of any law in force before the commencement of the Constitution, within 2 years thereof. Section 12 of the Constitution (First Amendment) Act, 1951, extends this period by 1 year.

India: Bombay (Offices of Profit).[1]—By The Bombay Legislature Members' (Removal of Disqualifications) Act, 1951,[2] a person is no longer disqualified from being chosen as a member of either House of the Bombay Legislature by reason of the fact that he holds any of the following offices: Parliamentary Secretary (under Minister); part-time Professor or Lecturer at a Government College; any office in a National Cadet Corps or the Territorial Army; or Secretary of a District Rural Development Board; provided that the holder of any such office does not hold any other office of profit under the State Government.[3]

India: Bihar: Legislative Assembly (Ministerial Statements).—A statement regarding certain figures of the Census of 1951 was released by Government to the Press in the first week of April, 1951, but was

[1] *See also* JOURNAL, Vol. XVIII. 238, 251. [2] Bomb. No. XXV of 1951.

[3] Contributed by the Secretary of the Bombay Legislature Department.—[ED.]

not made in the House even though the Assembly was in Session at the time. Later on during Question Hour a Member of the Assembly drew the attention of the Chair to the fact by saying that the above statement of Government should have *first* been made in the House. Upholding this view the Speaker made the following observation:

I agree with the hon'ble member. The Chair and the hon'ble members hope that such statements shall be made first on the Floor of the House and then to the Press.

Thus an important point of convention emerged from this case, namely, that if a public statement with regard to a matter of great public importance or an announcement of the policy is to be made public by Government it should *first* be made in the House if it is in session at the time before it is made anywhere else.[1]

India: Bihar: Legislative Assembly (Guillotine).—Recently, the Legislative business sponsored by Government had grown very large, and it was becoming increasingly difficult to dispose of all such business within the time allotted for it during the sessional programme of the Assembly. As a result opinions were being frequently expressed on the Floor of the House, specially by the Treasury Benches, that some procedural device should be adopted whereby any Bill, even when it is of a highly controversial nature, might be disposed of by the Assembly within a reasonable time. The Speaker, however, always hesitated, as in the past, to adopt such a method; but it became necessary to adopt it during the last August-September session of the Assembly in the case of Patna Corporation Bill, regard being had to the importance and implications of this Bill which specially demanded such treatment.

This Bill was introduced in the Assembly on October 31, 1950, when 4 days were devoted to its discussion before referring it to a Select Committee. The Select Committee had held 25 days' deliberations over it covering a period of about 10 months. One of the members, who was a member of the Select Committee, signed it subject to a minute of dissent. He did not, however, take much part in the deliberations of the Select Committee and preferred to join in the discussion in open House by tabling about 400 amendments. The Bill, as reported by the Select Committee, was discussed in the House on 8 days. The last date fixed for receiving amendments under the rules was extended thrice by the Speaker. But this member continued sending in his amendments even beyond the last extended date. So even after devoting 3 days to the discussion the Bill could report progress only up to clause 2. Thus an established procedural device was resorted to when it was found absolutely necessary to cut short the debate on the Bill.

Under the circumstances noted above the Minister-in-charge deemed it proper to move a guillotine resolution fixing a time-limit for the consideration and passing of the Bill. Initially the House

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

passed a resolution allotting 4 days for the purposes of consideration and passing of the Bill from the stage at which it was found on the last day on which it was discussed and this time was further extended by 4 hours by another resolution adopted by the House. Serious objections were raised at the outset, but it was soon found that when it was one of the technical devices adopted regularly during the past 60 years in the House of Commons at Westminster to cope with the rapidly increasing business of Government there was no reason why the same procedure should not be adopted here also in the exigencies of the situation which demanded it.[1]

Pakistan (Constitutional).[2]—The provisions of the Motion containing the aims and objects of the Constitution were set forth in Volume XVIII of the JOURNAL.

On September 28, 1950, the Interim Report of the Basic Principles Committee was presented to the Constituent Assembly but its consideration was postponed with a view to ascertaining public opinion on its recommendations. The main features of this Report are that the head of the State will be elected in a joint Session of the 2 Houses of the Central Legislature for a period of 5 years. The Central Legislature will consist of 2 Houses; one to be elected directly by the people on the basis of population and the other to be elected by the Provincial Legislatures on the basis of equal representation of the Provinces.

The type of the Constitution is Federal, the Provinces have been given full autonomy in matters like maintenance of order, justice, health, land, etc. Legislative competence of the Central and Provincial Legislatures will be determined on the basis of the 3 lists of subjects appended to the Report. The first list contains subjects exclusively Central and the second exclusively Provincial. The third one is a list of subjects on which the Central and Provincial Legislatures will have concurrent powers of legislation, but the Central Law will prevail over the Provincial Law in case of a conflict. The recommendations of this Committee on parts of the Constitution relating to judiciary, franchise and the rights of minorities have almost been finalized.

NOTE.—*At the time of going to press (November 1952) the subject of Bengali being made one of the State languages was considered by the Pakistan Constituent Assembly but not brought to conclusion.*

The same remarks apply to the Report of the Committee on Constitutional and Administrative Reforms in Baluchistan.

Pakistan: East Bengal (Adjournment of the House (Urgency) Motions).—On February 6, 1950, the Opposition tabled several motions for adjournment of the House, for the purpose of discussing a definite matter of urgent public importance, none of which fulfilled the terms and conditions laid down in Rule 98 of the East Bengal

[1] Contributed by the Secretary of the Legislative Assembly.—[ED.]
[2] *See* JOURNAL, Vols. XVIII. 99; XIX. 96.

Legislative Assembly Procedure Rules. In disallowing all of them the Chair discussed the merits of each motion and explained why they were disallowed. The Opposition was, however, not satisfied and they staged a walk-out, not in disrespect to the Chair but as a protest against Government in connection with the matters proposed to be discussed in the said motions which they had tabled.[1]

Southern Rhodesia (Constitutional).[2]—On April 12[3] the Select Committee on Amendment of the Constitution presented its Final Report, and on April 19 the Chairman (Mr. R. O. Stockil, Leader of the Opposition) moved "That the Report be referred to the Government for consideration", and in so doing gave a concise and clear explanation of the Report.[4] As the report of the officials of Southern Rhodesia, Northern Rhodesia, Nyasaland, the Central African Council and the Commonwealth and Colonial Offices on the Federation of the three territories had been completed, and was to be laid upon the Table of the Legislative Assembly on June 13, when the debate was resumed on June 12 the Prime Minister moved an amendment[5] to the motion, viz. to add at the end the words "in conjunction with any other reports on constitutional changes that may have to be considered in the near future", which was adopted and the motion as amended agreed to.

The Report[6] of the Select Committee contains an explanatory introduction, detailed recommendations relating to the powers of the proposed Senate and the method of electing the Senators, and proposals regarding the raising of the Colony to the status enjoyed by the sovereign independent members of the British Commonwealth.

The Senate proposed has 15 members, of whom 8 are directly elected, by the system of "Proportional Representation with the single transferable vote", the whole Colony being treated as one "constituency" for this purpose; 5 are indirectly elected by an electoral college consisting of the Chairmen (or Mayors) of the Municipalities and Urban and Regional District Councils, the Chairmen (or Presidents) of the Federated Chambers of Commerce and of Industries, the Trades and Labour Council, the National Farmers' Union, and a representative of the Chamber of Mines and the Mining Federation, the method of voting being the "proportional representation" system; and finally 2 members, chosen for their knowledge of the African inhabitants of the Colony by a Board consisting of the Chief Justice, the Chief Native Commissioner, the Prime Minister, and the Leader of the Opposition, with the Speaker of the Assembly as Chairman.

The Report proposes that the Senate shall have no power to amend any Bills "so far as they impose taxation or appropriate revenue

[1] Contributed by the Secretary of the Legislative Assembly.—[Ed.]
[2] *See also* JOURNAL, Vols. IV. 32; V. 49; VI. 63; VII. 79; XI-XII. 61; and Article XVIII hereof. [3] 1951 VOTES, 17. [4] 32 *S. Rhod. Hans.* 290-303.
[5] 32 *S. Rhod. Hans.* 2523. [6] 1951 VOTES, 17-33.

or moneys for the service of the Government", but may suggest amendments. If a Bill is rejected by the Senate in three successive sessions, after the third rejection it may be sent to the Governor-General for Assent. Only one Minister of the Crown may be appointed from among the Senators, and every Minister shall have the right to speak, but not to vote, in the House of which he is not a member.

The concluding portion of the Report makes proposals for removing all the present restrictions from the Constitution of Southern Rhodesia, and regarding other matters connected with the raising of Southern Rhodesia to "Dominion Status".

In addition to considering the Report outlined above, the House dealt with two Bills of a Constitutional nature: the Constitution Amendment Bill (now Act 6 of 1951) and the Electoral Amendment Bill (now Act 7 of 1951). The former made provision for increasing the number of members in the Legislative Assembly from 30 to as near 40 as possible, the relevant section (8(4)) stating:

(*a*) For the purposes of the next general election after January 1, 1952, the commission shall ascertain whether it is possible without violating the departure principle to redivide the Colony into forty electoral districts, each returning one Member, of which at least fourteen shall be rural electoral districts.

(*b*) If such redivision is possible, the commission shall so redivide the Colony.

(*c*) If such redivision is impossible, the commission shall create such number of additional urban electoral districts as may be necessary to maintain the departure principle and, in such a case, the commission shall redivide the Colony into such number of electoral districts exceeding forty as it may deem necessary, so however that at least fourteen of such electoral districts shall be rural electoral districts and the number of such additional urban electoral districts shall be the lowest possible number which is necessary to maintain the departure principle.

The latter Act dealt with various matters relating to elections, particularly the qualifications of voters. It is now necessary for a voter to be a Southern Rhodesian citizen as well as a British subject; the property and income qualifications have been raised; and applicants for enrolment must have an "adequate" knowledge of the English language. Provision is also made for a complete re-registration of voters in 1952.[1]

British Guiana (Report of the Constitutional Commission, 1950-51).[2]—This Report[3] of the 3 Commissioners is a very comprehensive document of over 70 pages, and its Chapters deal with the historical background; constitutional development; Guiana to-day; Franchise; the Legislature; the Executive; the Judiciary; the Civil Service and the Amerindians. There are 2 Codicils, one showing a case for a Unicameral and the other for a Bicameral Legislature.

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

[2] *See also* JOURNAL, Vols. IV. 34; VII. 109; XI-XII. 79; XIII. 94; XIV. 104, 106.

[3] Colonial No. 280.

A Summary of Recommendations is given under 32 heads, but the subject will be reviewed when definite action has been taken on these recommendations. At present, the only change which has been effected is the passing of a Bill for the registration of all adult British subjects of 2 years' residence in the Colony.

East Africa High Commission (Central Legislative Assembly).[1]—The East Africa (High Commission (Amendment) Order in Council, 1951[2]) which came into force on December 6, 1951, amends the Order of 1947 by providing for the continuance until December 31, 1955, of Parts III and IV of the Order of 1947, which would otherwise have expired on December 31, 1951.[3]

Section 19 of the Order of 1947 is amended[4] by providing that the Unofficial M.L.A.s should be: (1) respectively a European, an Asian and an African, appointed by the Governor of Kenya; provided that such European and the Asian have been elected by Resolution of the Elected Members of the Legislative Council of Kenya who are Europeans and Asians respectively, such Elected M.L.C.s to include any Nominated Indian Unofficial M.L.C.s but to exclude the Arab Elected M.L.C. thereof; (2) a European, an Asian and an African appointed by the Governors of Tanganyika and Uganda respectively; (3) one person not holding an office of emolument under the Crown, being a resident of Kenya and an M.L.C. thereof; (4) one person being an Unofficial M.L.C. of Tanganyika and Uganda respectively, elected by Resolution by the M.L.C.s of Kenya, the Unofficial M.L.C.s of Tanganyika and Uganda; and (5) one Arab appointed by the High Commission.

Such Unofficial M.L.A.s are to hold their seats for the period specified in their Instruments of Appointment, or Resolution of Election, as the case may be. Section 6 of the Order deals with certain transitory provisions.

The R.I. of November 21, 1951, amends those of March 29, 1934, by the substitution of "Representative Indian Members" for "Nominated Indian Unofficial Members".

Kenya Colony and Protectorate (Constitutional).[5]—The Legislative Council (Temporary Provisions) Ordinance, 1951,[6] and the R.I. of November 21, 1951, provide, in place of the old Legislative Council, for a new Council consisting of the Governor, who is President; a Vice-President and Speaker; 8 *ex-officio* members; 18 nominated members, 21 elected members and 7 representative members, which means that the official side of the Council will be increased from 16 to 26 and the unofficial from 22 to 28.

The elected members are: one Arab member elected for and by the Arab voters, the whole Colony and Protectorate constituting one electoral area; one European, elected for and by the European

[1] *See also* JOURNAL, Vols. XV. 101; XVII. 278. [2] S.I. 1951, No. 2126.
[3] *Ib.* S. 3. [4] *Ib.* S. 4.
[5] *See also* JOURNAL, Vols. VIII. 96; XIV. 93; XVIII. 110. [6] No. 67.

voters of the 14 electoral areas named in Part A of Schedule I of the Ordinance; one non-Muslim Indian elected for and by such Indian voters for each of the 3 electoral areas named in Part B of such Schedule provided that 2 of such members are elected for the Central Area; and one Indian Muslim member by and for such Indian voters in the 2 electoral areas stated in Part C of such Schedule. Qualifications for registration of voters are also laid down.

The 8 *ex-officio* members of the Executive Council are: the member for Development (the Chief Secretary); Law and Order (the Attorney-General); Finance (the Financial Secretary); African Affairs (the Chief Native Commissioner); Agriculture and Natural Resources; Labour (the Deputy Chief Secretary); Education, Health and Local Government; and Commerce and Industry; in the case of Agriculture, Education and Commerce the member who is responsible for such Departments.[1]

The 7 representative members of the Legislative Council are such persons not holding public office as the Governor appoints, 6 of whom are to represent the African community and one the interests of the Arab community.[2]

The Ordinance is to continue in force until June 30, 1956.[3]

Federation of Malaya (Constitutional: "Ministerial" Members).[4] —On January 24, the Federal Legislative Council had under discussion the subject of a Government Memorandum[5] relating to the proposal for the introduction of a "Ministerial" system under which Departments of the Government would be grouped and placed under members of the Federal Legislative Council who would be responsible therefor to the High Commissioner, certain of such members to be appointed from among the Unofficial Members of the Council.

The composition of the Legislative Council has already been given in the JOURNAL.[6]

Clause 39 of the Federation of Malaya Agreement, 1948 (*i.e.*, the Constitution), provides that the 11 Official Members shall be persons holding offices of profit ("office of emolument") under the Federal Government or under the Crown, appointed by the High Commissioner, either by office or name, by Instrument under the Public Seal.

These 11 Official Members at present are: the Director of Medical Services; Chief Social Welfare Officer; Secretary of Chinese Affairs; Economic Secretary; Director of Public Works; Director of Education; Resident Commissioner, Malacca; Director of Agriculture; Secretary for Defence; Commissioner of Labour and Solicitor-General. They do not, however, provide a complete representation of Federal Departments in the Council, and it has been the practice,

[1] R.I. Cl. 1. [2] *Ib.* 11. [3] Contributed by the Acting Clerk of the Legislative Council.—[ED.] [4] *See also* JOURNAL, Vols. XV. 102; XVII. 262.
[5] Council Paper No. 49 of 1950. [6] Vol. XVII. 266.

where any other Department is unrepresented, for one of the 3 *ex-officio* members to answer for it.

The Government considers it desirable that *ex-officio* and official members should assume responsibilities for Departments, or groups thereof, in the Council so that all Departments are so represented. It is, therefore, suggested that 9 Official Members be appointed with the following designations (the groups of Departments being stated under each "Ministerial" office in the Memorandum): the member for: Home Affairs; Economic Affairs; Agriculture and Forestry; Health; Education; Industrial and Social Relations; Lands and Communications; Works; and Railways and Ports. These 9 members to be supplemented by 2 Official Members without Portfolio as circumstances may require.

Each such member is to be responsible to the High Commissioner for the Department in his charge and he must assume "Ministerial" responsibility therefor in the Legislative Council. It is also suggested that a number of Unofficial persons should accept such office, so that a proportion of the Official seats be held by them, but it is not proposed that all 9 should be Unofficial Members.

These "Ministerial" Members (who are remunerated) would be appointed by the High Commissioner and their removal from office subject to a $\frac{2}{3}$ vote of no confidence in the Legislative Council.

The Chief Secretary would then work more as a Prime Minister and Unofficial Members would also be members of the Executive Council and all its members M.L.C.s.

It is stated in the Memorandum, however, that these proposals are not to be confused with any later development of a "Cabinet" system. They are based on Official seats in the Legislative Council and not on the composition of the Executive Council. They reflect, however, a desire on the part of the Government to entrust certain high responsibilities for the conduct of public affairs to local citizens who have shown themselves worthy of this trust, to share the authority and responsibilities at present represented in the Legislative Council by Permanent Officials; no amendment of the Federal Agreement is thereby involved.

Speaker.—It is also proposed that in place of the High Commissioner as President there should be a Speaker, for whose office provision is made by amendment of the Federal Agreement.

Motion was then moved in the Legislative Council[1] by the Chief Secretary in approval of the above-mentioned suggestions, with the same amendments as to allocation of some of its Departments, and agreed to.

The Member System.—On April 25, some very complimentary remarks were made of the capabilities of, and the esteem in which, the members appointed to these new appointments were held by their fellow-M.L.C.s.[2]

[1] Report of Proceedings of the Fed. Leg. Co., pp. 14 etc. [2] *Ib.* 10.

Mauritius: Legislative Council (Governor's Recommendation).—By Order in Council dated July 21, 1950,[1] s. 33 of the Order of 1947, the following proviso has been added to such section in regard to the necessity for the Governor's Recommendation being given in the Council in matters concerning public money:

Provided that, except with recommendation or consent of the Governor signified thereto, the Council shall not proceed upon any Bill, amendment, motion or petition, which in the opinion of the Governor or other Member presiding would dispose of or charge any public revenue or public funds of the Colony, or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty.

Mauritius: Legislative Council (Vacation of Seat).[2]—The Mauritius (Legislative Council) (Amendment) Order in Council of October 4, 1951, amends s. 10 (3) of the Order of 1947, the resignation of a member from the Legislative Council having to be by writing under his hand to the Governor.

Mauritius (Application of Regency Act).—An interesting feature of this Instrument is the following 2 recitals in the Preamble to the Order as a consequence of the Regency Act:[3]

Whereas His Majesty, in pursuance of the Regency Acts, 1937 and 1943, was pleased, by Letters Patent dated the Twenty-seventh day of September, 1951, to delegate and grant unto Her Majesty The Queen, Her Royal Highness The Princess Elizabeth Duchess of Edinburgh, Lady of the Most Noble Order of the Garter, C.I., Her Royal Highness the Princess Margaret, C.I., His Royal Highness The Duke of Gloucester, K.G., K.T., K.P., G.M.B., G.C.M.G., G.C.V.O., and Her Royal Highness The Princess Royal, C.I., G.C.V.O., G.B.E., or any two of them, as Counsellors of State, full power and authority during the period of His Majesty's illness to summon and hold on His Majesty's behalf His Privy Council and to signify thereat His Majesty's approval of any matter or thing to which His Majesty's approval in Council is required.

Now, therefore, Her Majesty The Queen and Her Royal Highness The Princess Elizabeth, being authorized thereto by the said Letters Patent, and in the exercise of the powers conferred in that behalf, do hereby, by and with the advice of His Majesty's Privy Council, on His Majesty's behalf order, and it is hereby ordered, as follows: (Then follow the sections of the Order.)

Northern Rhodesia (Suspension of (Finance) Standing Order).—On July 2,[4] before the Legislative Council had come to the Order of the Day for 2 *R.* of the Pensions (Increase) Bill, Mr. Speaker asked whether S.O. 31 had been complied with. Whereupon the Attorney-General (Mr. E. I. G. Unsworth) in reply said that S.O. 31 required that no Bill which sought to impose a charge on the public revenue of the Territory shall be introduced unless ordered on the adoption of the Estimates by the *Com.* of Supply. But he submitted that although the strict letter of the Standing Order had not been complied with, its spirit had been observed, in that the charges which the Bill sought to impose had been considered in *Com.* of Supply and also debated in the House last Session, and that, in consequence, they

[1] *See* JOURNAL, Vol. XVII. 287. [2] *Ib.* 285. [3] *Ib.* VI. 89; IX. 12; XI-XII. 80; *see also* Article V hereof. [4] 71 *Hans.* 390.

had been included in the draft Estimates of revenue and expenditure as a token provision.

In view of the fact that the Committee had not actually ordered the introduction of the Bill, Mr. Unsworth asked for Mr. Speaker's guidance as to whether the suspension of the Standing Order could, under the circumstances, be allowed so as to enable the Bill to be proceeded with.

Mr. Speaker said that the matter had given him considerable concern and that they had had no previous occasion on which to refer to it other than on the Appropriation Bill in which the rule was implemented as laid down. As, however, the Bill had been fully discussed in the House last September on the Motion for the adoption of the Report of the *Sel. Com.*, subject to certain amendments approved by the House, which was the spirit of the Rule, and as there was no doubt that the *Com.* of Supply had considered the financial implementation of the Bill and it being one of those on which a definite figure could not be fixed, the practice of a token figure was adopted.

Under these circumstances, said Mr. Speaker, he was satisfied that the purpose of the Standing Order had been implemented. He therefore saw no reason why the Attorney-General should not move for its suspension; it was then for the House itself to decide.

The Attorney-General thereupon moved the suspension of the Standing Order, which was agreed to and 2 *R.* of the Bill was proceeded with.[1]

Tanganyika (Constitutional Development).[2]—The Report of the Committee on Constitutional Development, 1951, as well as the Debates in the Legislative Council thereon were published early in the year under review in this issue.

As, however, this matter is at present in embryo, it will not be possible to deal with it in detail, but brief reference will be made to those parts of the Report which affect the Legislature of the Territory.

In this connection, it is interesting to note that under the Native Authority Ordinance such Authorities have power to make orders on a great variety of topics governing the day to day life of the African.

These Authorities may also make Rules, with the consent of the Governor, "providing for the peace, good order and welfare" of the African and for the levying of local revenue.

The Committee was appointed on December 3, 1949, by the Governor with the following terms of reference:

To review the present constitutional structure in the Territory, both local and territorial, and to make recommendations for future constitutional developments in the Territory

and consisted of: the Member for Law and Order (Mr. Charles Mathew, C.M.G., Q.C.) as Chairman; all the Unofficial Members of

[1] Contributed by the Clerk of the Legislative Council.—[ED.]
[2] *See also* JOURNAL, Vols. VIII. 97; XVI. 77; XVIII. 116.

the Legislative Council and the Member for Local Government (Mr. R. de Z. Hall) as members. The Committee appointed 3 sub-committees but as the Second and Third Committees cover local government, a matter not coming within the sphere of this JOURNAL, reference will only be made to the First Sub-committee, which deals with the future constitutional development of the Territory.

Briefly, a summary of the Committee's recommendations in regard to the Legislature is:

Executive Council.—Consideration to be given to the appointment of an African member.

Legislative Council.—Considerable increase in membership; special regard to be had to the position of Chiefs and the small class of educated Africans, many of whom are Government servants; official majority to be maintained until experience has been gained on the enlarged Council; the Governor to continue to preside; the basis of unofficial membership to be equal division of seats among the 3 main races, as the most suitable expression of the principle of partnership; the Council to consist of the Governor, 21 official and 21 unofficial members; a limited number of the latter to be appointed to the official side of the Council.

Attached to the Report are 2 Despatches on the Committee's Report, one from the Governor to the Secretary of State and the other his reply.

New Royal Cypher of Queen Elizabeth II.[1]—The design here shown is that of the new Royal Cypher, as approved by the Queen, used by all Departments of State and public bodies and usually appearing on regimental colours, standard guidons, badges, arms and appointments, Parliamentary chairs, etc.

The lettering is in gold, the Crown is in gold with a red cap and the jewels are in green, blue, red and white.[2]

O. C.

November 24, 1952.

[1] *See also* JOURNAL, Vol. V. 62. [2] With acknowledgments to the *Cape Argus*.

II. DEMISE OF HIS LATE MAJESTY KING GEORGE THE SIXTH

Proceedings in the House of Lords February 6-19, 1952.

By A. P. D. Smyth,
Senior Clerk, House of Lords.

Wednesday, February 6, 1952.

The House met at 2.30 p.m., pursuant to the Succession to the Crown Act, 1707. The Lord Privy Seal (the Marquess of Salisbury) said:

My Lords, it is my grievous duty to inform your Lordships of the death of His Majesty King George VI, which occurred this morning. A meeting of the Accession Council has been summoned for this evening, to proclaim the Accession of the new Sovereign. It will be held at St. James's Palace at 5 p.m. No public business will be taken till after the funeral of His late Majesty.

The House then adjourned until 7 p.m. Prayers were read and Peers took the Oath (the Lord Chancellor taking it first).

The form of Oath taken was:

I . . . do swear by Almighty God that I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth, Her Heirs and Successors, according to Law. So help me GOD.

The form of Affirmation (Oaths Act, 1888) was:

I . . . , having conscientious objection to the taking of an oath, do solemnly, sincerely and truly declare and affirm that I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth, Her Heirs and Successors, according to Law.

The House adjourned at 7.45 p.m.

(*Note.*—The Appellate Committee, which was engaged on the hearing of a Judicial Appeal, adjourned on being notified of the news of the King's death, at 11.15 a.m. until the following morning.)

Thursday, February 7.

The House sat from twelve noon until 1 p.m., and from 4 p.m. until 6 p.m. to enable Peers to take the Oath.

Friday, February 8.

The House met at 12 noon. Prayers were read. The Lord Chancellor (Lord Simonds) then said:

My Lords, I beg to acquaint your Lordships that I have received the following letter from the Earl Marshal:

My Lord,

It is the Queen's command that the remains of His late Majesty shall be removed from Sandringham to Westminster Hall on Monday next, February 11, there to lie in state until His late Majesty's funeral on February 15.

The Queen thinks that members of your Lordships' House would wish to be present in Westminster Hall on February 11, together with members of the House of Commons, and I notify you accordingly.

The body of His late Majesty will reach Westminster Hall at 4.15 o'clock.

I am,

Your Lordships' obedient servant,

Norfolk,
Earl Marshal.

The Lord Privy Seal (the Marquess of Salisbury) then moved that the House should attend the Lying-in-State of His late Majesty King George VI in Westminster Hall on Monday next, February 11.

On Question, Motion agreed to, and ordered accordingly.

The Lord Chancellor then read to the House telegrams of condolence which he had received from the upper chambers of various countries.

Several Peers took the Oath and the House then adjourned at 12.30 p.m. until 2 p.m. on Monday, February 11.

Monday, February 11.

The House met at 2 p.m. Prayers were read. The Archbishop of York, who was to speak later in the proceedings, took the Oath.

The Lord Privy Seal (the Marquess of Salisbury) said:

My Lords, I have the honour to acquaint your Lordships that I have received a Message from Her Majesty the Queen, signed with her own hand, which I shall beg the Lord Chancellor to read to your Lordships.

Lord Salisbury thereupon left his place and presented the Royal Message to the Lord Chancellor on the Woolsack.

The Lord Chancellor (Lord Simonds) said:

My Lords, the Message is as follows:

I know that the House of Lords mourns with me the untimely death of my dear Father. In spite of failing health, he upheld to the end the ideal, to which he pledged himself, of service to his Peoples and the preservation of Constitutional Government. He has set before me an example of selfless dedication which I am resolved, with God's help, faithfully to follow.

Elizabeth R.

The Lord Chancellor then handed the Royal Message to the Clerk of the Parliaments who had come up to the Woolsack from the Table of the House to receive it.

The Marquess of Salisbury then said: My Lords, I rise to thank Her Majesty for the Gracious Message which the Lord Chancellor has read to you and to move an humble Address to the Sovereign, the terms of which I shall now read:

That an humble Address be presented to Her Majesty:

To thank Her Majesty for Her Majesty's gracious Message: To convey to Her Majesty the deep sympathy felt by this House in the grievous affliction which Her Majesty has sustained by the death of our late beloved King, Her Majesty's Father, of blessed and glorious memory:

To assure Her Majesty that the example of selfless public service which our late Sovereign displayed, His untiring endeavours for the welfare of His peoples and His fortitude in adversity will ever be held in reverent, affectionate and grateful remembrance: and

To express to Her Majesty our loyal devotion to Her Majesty's Royal Person, and our firm conviction that, under the blessing of Divine Providence, Her Majesty will, throughout Her Reign, further the happiness and protect the liberties of all Her peoples.

My Lords, I suggest that it may be convenient for the House to consider at the same time two further Motions, to send Messages of Condolence to Her Majesty the Queen Mother and to Her Majesty Queen Mary which I propose subsequently to move in the following terms:

That a Message of Condolence be conveyed to Her Majesty Queen Elizabeth, the Queen Mother:

Tendering to Her Majesty the Deep sympathy of this House in Her bereavement;

Assuring Her Majesty that this House shares Her sorrow in the irreparable loss which Her Majesty and the nation have sustained by the death of our beloved King, Her Husband; and

Expressing to Her Majesty the reverence and affection in which Her Majesty will ever be held by this House;

That a Message of Condolence be conveyed to Her Majesty Queen Mary:

Assuring Her Majesty of the deep and loyal affection of this House; and

Expressing to Her Majesty the heartfelt sympathy of its members in the grievous loss which Her Majesty and the Nation have suffered by the death of our late beloved King, Her son.

The Marquess of Salisbury (on behalf of the Conservative Party) then made his Speech on the King's death and ended by moving

that an humble Address be presented to Her Majesty.

Speeches followed by:

Earl Jowitt (on behalf of the Labour Party),
Viscount Samuel (on behalf of the Liberal Party),
Lord Teviot (on behalf of the National Liberal Party),
Archbishop of York (in the absence, through illness, of the Archbishop of Canterbury),
Lord Chancellor.

On Question, the Motion for the Address to Her Majesty the Queen was agreed to *nemine dissentiente*, and the Address was ordered to be presented to Her Majesty by the Lords with White Staves (the Lord Steward and the Lord Chamberlain—both Household Officers).

Lord Salisbury then formally moved that Messages of Condolence be conveyed to Her Majesty Queen Elizabeth, the Queen Mother; and to Her Majesty Queen Mary. These were agreed to *nemine dissentiente* and ordered to be presented by the Archbishop of Canterbury, the Lord Chancellor, the Lord Privy Seal (M. Salisbury), the Earl Jowitt and the Viscount Samuel.

Lord Salisbury then moved the adjournment of the House during pleasure until 3.30 p.m.

When the House resumed, Lord Salisbury moved that the House should proceed to Westminster Hall to attend the Lying-in-State of His late Majesty King George VI. On Question, Motion agreed to. The Officers of the House assisted the marshalling of the procession, which moved off in the following order:

The Lord Chancellor and his Train followed by the Clerks at the Table,
The Lords Spiritual,
Privy Councillors,
Peers on the Front Benches,
Other Peers.

Both Houses duly assembled in Westminster Hall to await the arrival of the Royal Coffin. When the coffin had been placed upon the catafalque, Her Majesty the Queen, Her Majesty the Queen Mother and other Royal Mourners took up positions at the head of the coffin.

The Archbishop of York, assisted by the Dean of Westminster, then conducted a short service. The singing of "Abide with Me" by the unaccompanied choirs from the Chapel Royal, St. James's and Westminster Abbey was most impressive.

At the conclusion of the service, Peers returned to the House: several Peers took the Oath, and the House then adjourned at 5.3 p.m. until Tuesday, February 19.

The public were allowed to view the Lying-in-State from Tuesday, February 12, until Thursday, February 14.

Friday, February 15.

The funeral of His late Majesty took place at St. George's Chapel, Windsor. A service of commemoration was held at Westminster Abbey at 3 p.m.

Tuesday, February 19.

The House met at 2.30 p.m. Before public business began, the

Lord Chamberlain (the Earl of Clarendon) said: "My Lords, I have the honour to present a Message from Her Majesty the Queen, signed with her own hand. The Message is as follows:

I thank you from the bottom of my heart for the loyal and affectionate address which the House of Lords has presented to Me on the sad loss that I have suffered, and on My Accession to the Throne. I value highly the warm expression of your attachment to My person and of your confidence in My determination to follow My dear Father's example of devotion to the service of His peoples throughout the world. I pray that with the blessing of Almighty God I may ever justify your trust, and that, aided by your counsel and sustained by the strength of the affection of My peoples, I may uphold the ideals that My Father set before Me of peace, freedom and the happiness of the great family of which I am now the Head.

Elizabeth R.

The Lord Privy Seal (the Marquess of Salisbury) said: "My Lords, I have to inform your Lordships that, together with the most reverend Primate the Lord Archbishop of Canterbury, the Lord Chancellor, the Earl Jowitt and the Viscount Samuel, I, pursuant to the Order of the House, waited to-day upon Her Majesty Queen Elizabeth the Queen Mother, and Her Majesty Queen Mary, with the Messages of this House of February 11, and that their Majesties made the following replies.

Her Majesty Queen Elizabeth the Queen Mother:

'I thank you most sincerely for your Message of Condolence, which will help Me to bear the burden of My great sorrow. I am deeply touched by your warm sympathy and I am moved by this further sign of your close and constant affection towards Me.'

Her Majesty Queen Mary:

'I thank you for your Message of Condolence. The warmth and sincerity of your sympathy will be a consolation to Me at this time of deep personal sorrow.'"

The Lord Chancellor then read further messages of condolence from foreign countries, after which the House resumed public business.

III. DEATH OF KING GEORGE VI

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

The death of his late Majesty King George VI became known to Mr. Speaker and the Clerk of the House shortly before the news became public on the morning of Wednesday, February 6, the House being called to meet at its usual hour of half-past two that day. At that hour the Speaker in Court Mourning processed in the usual manner but there were no Prayers, and immediately he had taken the Chair the Speaker called upon the Prime Minister, who formally announced the King's death to the House, and informed them that the first part of The Accession Council would be held at 5 o'clock (the Queen being in Kenya or on her way back by aeroplane) and asked Mr. Speaker for guidance. The Speaker said he proposed immediately to suspend the Sitting and resume the Chair at 7 o'clock when he would himself take the Oath and give other hon. members an opportunity of so doing, and then left the Chair. Between 7 p.m. and 9.30 p.m. that night over four hundred members were sworn.

On the following day the House met at its usual time and sat for a couple of hours during which other members were sworn, but no business was done. The second part of The Accession Council was held on Friday morning (the Queen being now back in this country) and the meeting of the House was postponed till mid-day to enable Privy Councillors to attend the Council. After an announcement that on Monday an address of condolence to Her Majesty and Messages to Queen Elizabeth the Queen Mother and to Queen Mary would be moved, a few other members were sworn and the House then adjourned over the week-end.

On Monday the House met at 2 p.m. instead of 2.30 p.m. and an Address to Her Majesty the Queen was moved by the Prime Minister, seconded by Mr. Attlee and spoken to by Mr. Clement Davies and Mr. Walter Elliot; the debate covered both the Address and the Messages to the Queen Mother and Queen Mary. All these were passed *nemine contradicente* and the Sitting was then suspended until it was time for the House of Commons to go in procession to Westminster Hall, where together with the House of Lords they were to receive his late Majesty's body.

About twenty to four the Speaker, preceded by the Mace and followed by the Clerks and then the members walking two abreast, went from the House through the Members' Lobby to the East Door of Westminster Hall, and took up their positions on the East side of the Hall. The House of Lords lined the Western side with the Bishops in the centre; their white surplices forming a marked contrast in the dark lines of the two Houses which faced each other across the breadth of the Hall. The Hall was thickly carpeted so as

to absorb all sound of footsteps. As the time came for the arrival of the coffin the Earl Marshal preceded by the Heralds moved in dead silence from the South end of the Hall to the Great North Door at which the coffin was to arrive. As all were in full dress this silent, colourful procession down the steps at the South end of the Hall was a most impressive sight. As the Earl Marshal's procession reached the North Door the Archbishop of York and the Dean of Westminster followed by the massed choirs of the Chapels Royal emerged on to the steps at the South end, where the choirs remained while the Archbishop and the Dean advanced through the Hall to the North door to meet the coffin. When the coffin arrived the Earl Marshal's procession preceded it while the Royal Mourners followed. When the coffin covered by the Royal Standard and with the Crown Imperial resting upon it had been placed upon the catafalque, the Archbishop of York conducted a short, simple service beautifully sung by the choir. At the end of the service the Earl Marshal escorted the Royal Mourners to the North Door and when the last of the royal cars had left the Speaker and the Lord Chancellor each processed towards the North Door and then turning inwards, proceeded up the floor of the Hall passing one each side of the bier, and followed by the members of their respective Houses in procession. Side by side the Lord Chancellor and Speaker, preceded by their respective Maces, processed up the stairs at the South end and turned through St. Stephen's hall into the Central Lobby, where with a mutual obeisance they parted, Lords to the right, Commons to the left, and so made their way back to their respective Houses. As soon as a reasonable number of the Commons had returned the Speaker announced that members and their wives might visit the Hall when it had been made ready by about 7 p.m. The House then adjourned for eight days.

Proclamation of Accession.

The following is the Form of Proclamation of Accession:

Whereas it hath pleased Almighty God to call to His Mercy our late Sovereign Lord King George the Sixth of Blessed and Glorious Memory by Whose Decease the Crown is solely and rightfully come to the High and Mighty Princess Elizabeth Alexandra Mary:

We, therefore, the Lords Spiritual and Temporal of this Realm, being here assisted with these of His late Majesty's Privy Council, with representatives of other members of the Commonwealth, with other Principal Gentlemen of Quality, with the Lord Mayor, Aldermen and Citizens of London, do now hereby with one voice and Consent of Tongue and Heart publish and proclaim that the High and Mighty Princess Elizabeth Alexandra Mary is now, by the Death of our late Sovereign of Happy Memory, become Queen Elizabeth the Second, by the Grace of God Queen of this Realm and of all Her other Realms and Territories, Head of the Commonwealth, Defender

of the Faith, to whom Her lieges do acknowledge all Faith and constant Obedience with hearty and humble Affection; beseeching God, by whom Kings and Queens do reign, to bless the Royal Princess Elizabeth the Second with long and happy Years to reign over us.

Given at St. James's Palace this Sixth day of February in the year of our Lord, one thousand, nine hundred and fifty-two.'

Official Oath of Office taken by Ministers

I . . ., do swear that I will well and truly serve Her Majesty Queen Elizabeth in the office of . . . So help me God.

The same form of the Oath and form of Affirmation was taken as in the House of Lords.

An official Memorial Service was held in St. Margaret's, Westminster, for the late Sovereign on the day of the Funeral which members and officers and their wives of both Houses were entitled to attend.

IV. PROCEEDINGS IN THE PARLIAMENTS OF NORTHERN IRELAND, CANADA, AUSTRALIA, NEW ZEALAND, SOUTH AFRICA, CEYLON, PAKISTAN, INDIA AND IN THE SEVERAL STATES OF THE CHANNEL ISLANDS, UPON THE DEATH OF KING GEORGE VI AND THE ACCESSION OF HER MAJESTY QUEEN ELIZABETH II TO THE THRONE

By The Editor

While the proceedings so ably described in the two preceding Articles were taking place at Westminster, corresponding proceedings were being conducted in the Parliaments of those Member-Countries of our Commonwealth and in the Legislatures of our widely scattered Colonial Empire which were in Session. In other cases similar action was taken immediately the Parliament or Legislature next met—the Succession to the Crown Act 1707[2] not applying Overseas.

Owing to the large number of Overseas Parliaments and Legislatures, space does not admit of an account of all these events being given here; indeed it would, in many cases, entail much repetition.

In regard, however, to the Parliaments and Legislatures named in the title to this Article, there was general unanimity in the terms of the Address humbly submitted by them to Her Majesty the Queen, as well as to Their Majesties the Queen Mother and Queen Mary, conveying both their deep sorrow at the passing of the well-beloved King and the Addresses to the Princess Elizabeth expressing the

[1] Among the 197 signatories thereto were: Mr. Vincent Massey, Governor-General designate of Canada and a Privy Councillor, and the High Commissioners in London for Australia, New Zealand, Ceylon, India, Pakistan and Southern Rhodesia.—[Ed.]

[2] 6 Anne, c. 41.

sincere congratulations and good wishes from Her loyal subjects, of many races, creed and colour upon Her Accession to the Throne.

There were, in some instances, differences in style and practice in regard to the forms of Oaths of Allegiance, as well as in the Proclamation of Accession, which are of constitutional interest, for, in addition to those necessitated in the citation of the corresponding authority in the Member-Country, there were more distinct differences both in the method of declaration and the terms of some of the Proclamations, although in full unison with the general spirit of devotion and loyalty declared at Westminster in common allegiance to the Royal Person and Throne of their new Sovereign.

It would, however, indeed be strange if there were not some variety of form and principle, in view of the status of the Member-Countries of the Commonwealth, which has come about, in some directions since the passing of the Statute of Westminster 1931, by which such Countries, while holding true allegiance to the Crown, are now legislatively sovereign in their own right subject to the sovereignty conferred upon them by themselves each under their own particular Constitution and, in the case of the Channel Islands and the Isle of Man, under their ancient laws, rights and privileges.

It is a matter of great regret that space does not admit of giving, even in résumé, the speeches delivered in the Parliaments and Legislatures throughout our Commonwealth and Empire, by their Prime Ministers, supported by the Official Leaders of the Opposition and of other Parties therein, in expression of their deep sympathy with the young Queen, Their Majesties the Queen Mother and Queen Mary, in their great bereavement and strong in their devoted loyalty to the Royal Person and Throne of their new Sovereign.

To these Addresses, Her Majesty Queen Elizabeth sent, under Her own Hand, gracious messages, full of human feeling and gratitude to Her loyal subjects living in practically every Continent of the world. Truly, Hers is a great legacy and a noble inheritance.

In view of the varying times at which those Parliaments not in Session were next to meet, both the transmission of the Addresses and Her Majesty's replies took place in the months following the fateful February of 1952.

With these prefatory words, it is now proposed to take note of the variations in form and practice above mentioned.

Northern Ireland.

On February 7, 1952, in the absence of the Governor, a Proclamation was issued by the Justices appointed by the Government of Northern Ireland under S. 11 of the Government of Ireland Act, 1920,[1] summoning Parliament, both Houses of which stood adjourned, to meet on February 11, in view of the death of the late King, to hear the Proclamation of Accession of Her Majesty Queen

[1] 10 & 11 Geo. V. c. 67.

Elizabeth, signed by the Privy Council of Northern Ireland, read to the members of both Houses.

At 11.55 a.m., on February 11, the Senate and the House of Commons met in their respective Chambers where the Speakers announced that Their Excellencies the Justices appointed for the government of Northern Ireland commanded their Honourable House to attend them immediately in the Central Hall, to which the Speaker with the Senate, and the Speaker with the Commons, proceeded, whereupon the Lord Chief Justice (Lord MacDermott) said:

Members of the Senate and of the House of Commons, my Lords, Ladies and Gentlemen, we meet to-day in the shadow of a great loss. As a mark of our sorrow and a token of respect for our late Most Gracious and well beloved King let us now for a brief space stand silent together.

Whereupon the House and the company assembled in the Central Hall stood for a short time in silence.

The Lord Chief Justice then said that it was his duty to proclaim the Accession of Her Majesty the Queen and read the Proclamation dated February 11 issued by the two Justices, which was in the same form as that at Westminster, except that the opening words of paragraph 2 were:

"We, therefore, the Justices for the Government of Northern Ireland, being here assisted with these His late Majesty's Privy Council, with other Principal Persons of Quality, with the Lord Mayor and Citizens of Belfast", in place of the words, "We therefore . . . Citizens of London", in the Westminster Proclamation.

The Senate and the Commons then returned to their respective Chambers, where each Speaker announced to his House that he would now take the Oath, followed by their members, after which their Sittings were suspended.

In the Senate.—The Leader of the House (Lieut.-Colonel Gordon) upon the resumption of the Senate at 2.15 p.m., advised the House of the death of His Majesty King George VI and moved:

That an humble Address be presented to Her Majesty as follows:

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Senate of Northern Ireland, in Parliament assembled, beg leave to convey to Your Majesty the heartfelt sympathy of this House in the grievous loss which Your Majesty has sustained by the death of our late Sovereign, King George the Sixth, Your Majesty's beloved father, whose memory will ever be cherished with reverence and affection.

In offering our loyal congratulations upon Your Majesty's accession we beg to assure Your Majesty of our devotion to Your Majesty's person and Throne. We earnestly pray that Your Majesty's reign will be marked by unbroken peace and tranquillity, by the prosperity and advancement of all the peoples of the Empire and Commonwealth, and by every blessing upon Your Majesty and all the members of the Royal Household—

which was supported by Mr. Cunningham and the Lord Mayor of Belfast and was Resolved, *nemine dissentiente.*

Resolutions were then passed in regard to the presentation of an Address to the Queen and also a covering Address to the Governor, after which Lieut.-Colonel Gordon said that it was with dutiful respect that they tendered their humble sympathy to the Queen Mother and moved:

That a Message of Condolence be sent to Her Majesty Queen Elizabeth on behalf of this House as follows:

Your Majesty,

We, the Senate of Northern Ireland, beg leave to offer to Your Majesty our deepest sympathy in the grievous loss which Your Majesty has suffered by the death of our late beloved Sovereign.

I would recall that less than a year ago when Her Gracious Majesty honoured Northern Ireland with a visit at a time when His late Majesty King George VI was unable to travel, it was from this Parliament Building she went down the great steps to mingle and talk with her well-loved subjects. We would pray God that she may be comforted and sustained in her great loss. The hearts of all the people are with her in her distress.

On Question, Motion agreed to *nemine dissentiente*.

In the Commons.—Upon the resumption of its proceedings at 2.30 p.m., Motions of Condolence with the Queen and the Queen Mother, together with an Address to the Queen upon her Accession, as in the Senate, were moved by the Prime Minister, supported by Mr. Henderson, Leader of the Opposition, and agreed to, *nemine contradicente*.

Channel Islands.

Jersey.—The States unanimously adopted the following Address to Her Most Excellent Majesty Queen Elizabeth the Second, on the occasion of Her Accession to the Throne, and requested His Excellency the Lieutenant-Governor to transmit the said Address to the Secretary of State, with a request that it be presented to Her Majesty in the name of the Assembly of the States.

TO

THE QUEEN'S MOST EXCELLENT MAJESTY

MAY IT PLEASE YOUR MAJESTY

The faithful States of the Island of Jersey, this day assembled, desire to give expression to the deep sorrow which the death of their beloved King has caused throughout this Island, where his Memory will ever live in the hearts of a people whose loyal devotion to the person of their Sovereign has been an unshaken tradition since their Norman Duke ascended the throne of England. And the States of Jersey, humbly offering the assurance of their abiding loyalty to the Crown, pray God to guide and preserve Your Majesty long to reign over these Realms.

Proclamation of Accession.—It has not been the custom in Jersey to issue such a Proclamation. The last occasion was when King Charles II was proclaimed on the death of his father. Naturally he was not proclaimed in England at that time.

The Oath of Allegiance is as follows:

Ile de Jersey
Serment d'Allégeance

Je . . . promets et jure fidélité et rendrai loyale obeissance, a Sa Majesté la Reine Elizabeth Deux et à ses héritiers et successeurs, suivant droit.
Et pour ce que Dieu me soit en aide.

Oath of Allegiance

I . . . do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors according to law.
So help me God.

On February 19, 1952, the Lieutenant-Bailiff presented to the Assembly copy of a telegram transmitted to the Secretary of State on February 6, on the death of His Late Majesty King George VI, together with a copy of a reply from Her Majesty The Queen, dated the 7th day of February.

Guernsey Royal Court.[1]—Upon the demise of His Majesty King George VI, the Royal Court assembled in the Chamber at 11.30 a.m., on February 8, the Lieutenant-Governor, the Bailiff, the Government Secretary, the Jurats, Crown Law Officers, Rectors, H.M. Receiver-General, Consuls, the Seigneurs and Dames of Fiefs being present.

After the Lieutenant-Governor had taken his seat H.M. the Greffier recited the Lord's Prayer in French, whereupon the Bailiff asked that the Act of Proclamation with the covering letters from His Excellency be handed to H.M. Procureur. H.M. the Comptroller then read the covering letter and H.M. the Procureur recited the Guernsey form prepared by H.M. Greffier and entered in the Proclamation Book.

The "Act" of Proclamation was in the same form as that at Westminster except that paragraph 2 opened with the words:

We therefore the Lieutenant-Governor, Bailiff, Jurats, Queen's Officers, Clergy, with numbers of other principal inhabitants of this Island . . .

in place of the words: "We therefore . . . London". God save the Queen was sung by all present, the Court rising from their seats. The Proclamation Book was then signed by His Excellency, the Bailiff and the Jurats, as well as by others present, the Bailiff announcing that the book would be deposited at the Greffe where anyone might sign. To the Proclamation there were eventually 203 signatures.

After this ceremony, the Bailiff declared that the Court stood adjourned until the Proclamation had been read on the Terrace and in the Market Place. At 12.15 the Court re-assembled in order that the Oath of Allegiance to the new Sovereign might be administered to members.

The Oath of Allegiance was administered to the Lieutenant-Governor by the Bailiff, and Jurat E. de Garis, the "Lieutenant-

[1] With acknowledgments to the Guernsey *Weekly Press and Advertiser*.—[ED.]

Bailif Suppléant", administered the Oath to the Bailiff, after which the Oath was taken by the Principal Officials.

Before the Royal Court (Upper Division) began its routine business on February 10, the Bailiff (Sir Ambrose Sherwill) paid tribute to the memory of the late King, after which the Court stood in silence for a moment or two.

States of Deliberation.—The proposal that the Meeting of the States of Deliberation arranged for February 13 be adjourned in token of the Island's grief at the death of King George VI was made by the Bailiff as President of the States on February 9.

On February 13, the first meeting of the States of Deliberation after the death of the King, the President reported the passing of His Majesty, King George VI, and that the Lieutenant-Governor and himself had despatched telegrams of condolence to Her Majesty the Queen, the Queen Mother and Queen Mary.

According to custom long-established in Guernsey, the States of Deliberation adopted the following Loyal Address signed by the Lieutenant-Governor and the Bailiff, submitting the following humble Address to Her Majesty Queen Elizabeth II:

To Her Most Excellent Majesty Queen Elizabeth the Second,

Most Gracious Sovereign—

The States of the Island of Guernsey this day assembled beg leave to express to Your Majesty, with their humble duty, the deep sympathy of the States and People of this Island in the grievous loss suffered by Your Majesty, by Her Majesty the Queen Mother, and by Her Majesty Queen Mary, and by all the Members of the Royal Family through the death of our late beloved Sovereign, His Majesty King George the Sixth. In no part of Your Majesty's dominions can that sad event have been attended with more sincere grief; nowhere will His late Majesty's memory be more lovingly cherished.

They humbly offer to Your Majesty their loyal and most loving good wishes on Your Majesty's Accession to the Throne.

The people of this Island remember with pride and joy Your recent visit here. Deeply conscious of Your Majesty's inspiring influence, they look with faith to the future, undismayed by the difficulties and dangers encompassing mankind.

They earnestly pray that the Blessing of Almighty God may sustain You and that Your Majesty's Reign may be long, happy and prosperous.

On Sunday, February 17, a Commemoration Service was held at the Cathedral Church at St. Peter Port, which was attended by the Lieutenant-Governor, the Bailiff and other notables of the Island.

Alderney.—On the same day a memorable ceremony took place when the President of Alderney, Commander S. P. Herivel, D.S.O., O.B.E., read to the people of Alderney the Proclamation of Accession of Queen Elizabeth II. He referred to the Queen as Her Majesty the Queen, Duchess of Normandy.

The President read the Proclamation, the last words—"God save the Queen"—being echoed by the crowd. The National Anthem was then sung. All the members of the Court and of the States were present.

Sark.—Approximately 100 citizens of Sark gathered in the precincts of the Court House on February 9 at noon to attend the simple, yet impressive, ceremony of the proclamation of H.M. Queen Elizabeth II.

All walks of island life were well represented, among whom were the Seigneur and Dame de Sark, the Seneschal, Greffier, Treasurer, Prévôt, 2 Constables, Tenants, People's Deputies, the Vicar, and the schoolmaster.

At mid-day the Prévôt, standing at the Courthouse entrance, read the Letters Patent to the Proclamation.

Though Sark's loyalty to the King has never been in doubt, her statesmen do not owe allegiance to the Queen. Indeed, permanent members—that is, the Tenants of Chief Pleas—do not take any form of Oath, as they take their seats in the Pleas either through inheritance or purchase. The People's Deputies, although they do take an oath to carry out their duties faithfully and well, do not take an oath of allegiance to the Queen.

Sark's message of sympathy was conveyed by the Seigneur and a gracious acknowledgment was received from Queen Elizabeth and displayed prominently.

Canada.

On Friday, February 15, a National Ceremony of Mourning by the people of Canada for His late Majesty King George VI was to have been held at the National War Memorial, Ottawa, but on account of the weather the function took place in the Parliament Buildings.

At 2.00 p.m., the Great Bell of the Carillon began to toll and massed bands played Chopin's Funeral March, Abide with Me, God save the Queen and O Canada, followed by 2 minutes' silence, and 56 minute guns were fired at half-minute intervals.

Wreaths were then laid by the Administrator, the Speaker of the Senate, the Mayor of Ottawa as well as by Field-Marshal Lord Alexander, on behalf of the Canadian Legion.

Then followed the playing of a Lament by the Pipe Band of the Cameron Highlanders of Ottawa, the Royal Salute, undraping of drums, and God save the Queen (6 bars), Flourish of Trumpets, God save the Queen and lastly Abide with Me was sung, also God save the Queen and O Canada.

The Sixth Session of the XXI Parliament was opened with the usual ceremony on February 28, and the Speech from the Throne commenced with reference to the great loss suffered by the people of Canada on the death of their late Sovereign King George VI.

The Prime Minister (Rt. Hon. L. S. St. Laurent) moved, seconded by the Leader of the Opposition (Mr. George A. Drew) that a humble Address be presented to Her Majesty the Queen in the following words:

We, Your Majesty's dutiful and loyal subjects, the Commons of Canada, in parliament assembled, respectfully desire to express our deep sympathy to Your Majesty in the great loss you have sustained by the death of the late king, Your Majesty's beloved father.

Your Majesty's sorrow and that of the royal family is shared in a personal way by the people of Canada, whose representatives we are. King George VI was a great king and a good man. By his devotion to duty, his high courage, his example as a husband and a father, and his concern for the welfare of those he ruled, he greatly endeared himself to his Canadian subjects. We will not forget the occasion when, accompanied by your beloved mother, he visited our country, nor will Canadians forget the many happy associations established in the course of his reign over us. In common with all the peoples of the Commonwealth, we shall ever deeply cherish his memory.

We welcome Your Majesty's accession to the throne, and we desire to convey to you a sincere expression of our loyalty and devotion. When Your Majesty, accompanied by your husband, visited us a few months ago, you left a deep and lasting impression upon the Canadian people. We are convinced that Your Majesty will ever seek to promote the happiness and well-being of all your subjects. As members of the parliament of Canada it is our desire and determination to uphold and support Your Majesty, to the utmost of our authority and wisdom; and it is our prayer that Divine Providence will sustain Your Majesty in the discharge of your heavy responsibilities.

The Prime Minister also moved, seconded by the Leader of the Opposition (Mr. Drew), the following message of condolence to the Queen Mother:

Your Gracious Majesty:

We, the Commons of Canada, in parliament assembled, respectfully beg leave to tender to Your Majesty our heartfelt sympathy in your great sorrow and bereavement. We share Your Majesty's grief and loss in the passing of our late sovereign, King George VI, who was greatly beloved by all his subjects.

We pray that, at this time, Your Majesty may be comforted and sustained by the remembrance of what your loving companionship meant to the late king throughout his life and reign; by memories of service shared; and by the sympathy and love that everywhere surrounds Your Majesty in your great sorrow.

Both Addresses, which were in French and English, and were also supported by Mr. M. J. Coldwell and Mr. Solon E. Low as Leaders of the other political Parties, were carried unanimously.

The Prime Minister then said that perhaps hon. members would feel that they were having a more personal part in the expression of their tribute of sympathy and loyalty if they were to stand together and sing "God save the Queen". Whereupon the members of the House rose and sang.

Proclamation of Accession.—This Proclamation, dated February 6, 1952, was issued by the Right Honourable Thibaudeau Rinfret, Chief Justice of Canada and Administrator of the Government of Canada, and signed only by the Secretary of State of Canada, read as follows:

To all to whom these Presents shall come. GREETING:

Whereas it hath pleased Almighty God to call to His Mercy our late Sovereign Lord King George VI of blessed and glorious memory by whose decease

the Crown of Great Britain, Ireland and all other His late Majesty's Dominions is solely and rightfully come to the High and Mighty Princess Elizabeth Alexandra Mary, Now Know Ye that I, the said Right Honourable Thibaudeau Rinfret, Administrator of Canada as aforesaid, assisted by Her Majesty's Privy Council for Canada, do now hereby with one voice and consent of tongue and heart publish and proclaim that the High and Mighty Princess Elizabeth Alexandra Mary is now by the death of our late Sovereign of happy and glorious memory become our only lawful and rightful Liege Lady Elizabeth the Second by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, QUEEN, Defender of the Faith, supreme Liege Lady in and over Canada, to whom we acknowledge all faith and constant obedience with all hearty and humble affection, beseeching God by whom all Kings and Queens do reign to bless the Royal Princess Elizabeth the Second with long and happy years to reign over us.

Oath of Allegiance.—This Oath, which was taken in either French or English, was in the same form as that in Jersey (*see above*), but with omission in the Canada Oath of the words: "her heirs and successors according to law" and "et à ses héritiers et successeurs, suivant droit", respectively.

Australia.

In House of Representatives.—On February 6, during the evening, unofficial reports of His Majesty's death were received and, at the suggestion of the Prime Minister (Rt. Hon. R. G. Menzies) the sitting was suspended for some 20 minutes. The Prime Minister then informed the House that the reports had been officially confirmed and, on his Motion, the House adjourned until the next morning.[1]

On February 7 the House met, and immediately after Prayers Mr. Menzies moved:

That the following Resolution be transmitted through His Excellency the Governor-General to Her Majesty the Queen:

We, the Members of the House of Representatives in the Parliament of the Commonwealth of Australia, express our gratitude for the devoted life and service of our late Sovereign, King George VI, whose death we mourn. We extend our profound and most loving sympathy to Your Majesty whose loyal subjects we now are, and to Her Majesty Queen Elizabeth and the other members of the Royal Family.

The Motion was supported by Dr. the Rt. Hon. H. V. Evatt, the Leader of the Opposition, and the Hon. John McEwen, Acting Leader of the Country Party, and passed, all members rising in silence.

The House then adjourned until February 9 (a date subsequent to the King's funeral).[2]

In the Senate.—This House was under adjournment during the week in which the news was received of the King's death, but Senate Ministers and those senators who were present in Canberra attended the reading of the Proclamation.[3]

[1] 1951-52 VOTES, 255; *Hans.* 6.2.'52, 24. [2] 1951-52 VOTES, p. 257; *Hans.* 7.2.'52, pp. 31-3. [3] 1951-52 VOTES, p. 257; *Hans.* 7.2.'52, pp. 31-3.

When the Senate met on February 12 it passed a Resolution of sympathy and immediately adjourned.

Memorial Service.—On Sunday, February 17, a Memorial Service for the late King was held in King's Hall, Parliament House. Members, Senators and the Diplomatic Corps were specifically invited to attend and a general invitation was extended to the public. The First Lesson was read by the Prime Minister, the Second Lesson by the Governor-General, and the sermon was preached by the Primate of Australia.

In the House of Representatives.—On February 19, immediately after Prayers, Mr. Speaker reported the Queen's reply to the Resolution of February 7. The Prime Minister then moved:

That the following Resolution be transmitted through His Excellency the Governor-General to Her Majesty the Queen:

We, the members of the House of Representatives in the Parliament of the Commonwealth of Australia, offer our congratulations on Your Majesty's accession to the Throne. We desire to assure Your Majesty of our loyalty and Allegiance and to express our earnest hope that Your Majesty's reign may be a long and successful one marked by the prosperity and progress of the countries of the Commonwealth.

The Motion was seconded by Dr. the Rt. Hon. H. V. Evatt, the Leader of the Opposition, and passed, all members rising.

Proclamation of Accession.[1]—On February 8, the Proclamation of Accession, dated February 7, 1952 (*given below*) was read by the Governor-General on the steps of Parliament House at Canberra. His Excellency was attended by Ministers, Mr. Speaker and his Officers, and members of the House of Representatives (*the Senate being under adjournment*). The Preamble of the Proclamation was the same as that declared at Westminster, but the remainder of the Proclamation read as follows:

We, therefore, Sir William John McKell, the Governor-General and Commander-in-Chief in and over the Commonwealth of Australia, and members of the Federal Executive Council do now hereby, with one voice and consent of tongue and heart, publish and proclaim that the High and Mighty Princess Elizabeth Alexandra Mary is now, by the death of our late Sovereign of happy memory, become Queen Elizabeth the Second, by the Grace of God, Queen of this realm and of all her other Realms and Territories, Head of the Commonwealth, Defender of the Faith, Supreme Liege Lady in and over the Commonwealth of Australia, to whom her lieges do acknowledge all faith and constant obedience, with hearty and humble affection:

Beseeching God, by whom Kings and Queens do reign, to bless the Royal Princess Elizabeth the Second with long and happy years to reign over us.

The Proclamation was also read ceremonially at all the Parliaments of the 6 States of the Commonwealth and a 21-gun salute was fired.

Oath of Office.—Shortly after the Accession of the Queen, Ministers renewed the Oath of Office as that previously taken was to serve His Majesty King George VI. On this occasion, the Oath form was altered to include the Sovereign's heirs and successors, as follows:

[1] *Commonwealth of Australia Gazette Extraordinary*, Feb. 8, 1952.

I . . . do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her heirs and successors, in the office of Minister of State for . . . So help me God.

Oath of Allegiance.—As the Oath of Allegiance taken by members of both Houses of Parliament is to the Sovereign and "Her heirs and successors according to law", members did not renew the Oath. This Oath with the Note given below is set forth in the Schedule to the Commonwealth of Australia Constitution Act, 1900,[1] as follows:

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria Her heirs and successors according to law. So help me God.

NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*

On February 8, and until the day of the Funeral, a 2-minute silence was observed throughout the Commonwealth, and the first Sunday thereafter was declared a day of mourning.

New Zealand.

Parliament was not in Session at the time of the King's death, so that there was no special Parliamentary funeral service for members, but a special Memorial Service for the late King was held in the Cathedral Church of St. Paul, Wellington, on Friday, February 15. The Service was interrupted by the tolling of bells and the blast of wharf sirens at 11.00 a.m., and the congregation stood in silence for 2 minutes.

Among those present were the Acting Prime Ministers, members of the Cabinet, the Speaker of the House of Representatives and the Clerk, as well as Diplomatic representatives (all of whom were specially invited). When Parliament resumed on June 25 one of the first proceedings was the taking of the new Oath by members. Resolutions were passed transmitting to Her Majesty the Queen lamentations on the King's death and congratulating Her on Her accession to the Throne.

Proclamation of Accession.[2]—This Proclamation, dated February 11, was read by the Governor-General (Lord Freyberg, V.C.), from the main steps of the House of Parliament on the same day, and signed by the Acting Prime Minister, Statesmen and the Chief Justice, 16 signatories in all. The Proclamation is in the same form as that at Westminster, except that the opening words of its second paragraph are:

We, therefore, Bernard Cyril, Baron Freyberg, the Governor-General of New Zealand, Keith Jacka Holyoake, Acting Prime Minister of New Zealand, and Members of the Executive Council, assisted by members of Parliament, Judges and Magistrates, Ministers of Religion, Mayors, Chairmen and members of Local Bodies and numerous other representative citizens here present

[1] 63 & 64 Vict. c. 12.

[2] *New Zealand Gazette*, Feb. 11. 1952.

in place of the words: "We therefore . . . London" in the Westminster Proclamation.

The above Proclamation was in different form to that issued on the Accession of King Edward VII.

Oath of Allegiance.—That taken by Ministers was:

I . . . do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law. So help me God.

That taken by members was:

I . . . do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second. So help me God.

House of Representatives.—On June 26 Mr. Speaker read a message from the Governor-General informing him of the death of King George VI and the Accession of Queen Elizabeth to the Throne; giving the terms of the Proclamation of Accession made in New Zealand as recorded in the New Zealand Gazette of February 11 (*see above*); and quoting the Declaration made by the Queen in London on the day of the Accession to the Throne (*see above*).

The Prime Minister (Rt. Hon. S. G. Holland) moved:

That a respectful Address in the following words be presented to Her Majesty the Queen:

To the Queen's Most Excellent Majesty:

Most Gracious Sovereign, we, Your Majesty's most dutiful and loyal subjects, the members of the House of Representatives of New Zealand in Parliament assembled, humbly desire to offer to Your Majesty our heartfelt sympathy in the loss of your illustrious father, our late beloved Sovereign King George VI, whose inspiring leadership and example of selfless public service and whose fortitude in adversity will ever be held in grateful and lasting remembrance by His late Majesty's sorrowing and loving subjects.

We respectfully beg to tender to Your Majesty our congratulations upon Your Majesty's accession to the Throne, and to affirm our loyalty to your person. We pray that, under Divine guidance, Your Majesty's reign may be distinguished by peace, prosperity, and general advancement in the welfare of all Your Majesty's subjects throughout the world.

—which was supported by the Rt. Hon. Walter Nash, the Leader of the Opposition, and the Hon. E. Tirikatene on behalf of the Maori people, and agreed to.

Union of South Africa.

In the House of Assembly.—On February 6, 1952,[1] immediately after Mr. Speaker had taken the Chair at 2.20 p.m. and read Prayers, the Prime Minister (Dr. the Hon. D. F. Malan) announced that news had just come to hand of the death of His Majesty King George VI, and moved, as an unopposed Motion, which was seconded by the Leader of the Opposition (Hon. J. G. N. Strauss):

That an Address be presented to Her Majesty the Queen expressing the sincere and respectful sympathy of this House, on behalf of the people of the

[1] 1952 VOTES, p. 150; *Assem. Hans.* No. 3, 729.

Union of South Africa, with Her Majesty, the Queen Mother and the Members of the Royal Family in the great loss sustained by the death of His Majesty King George the Sixth, who, during his long and beneficent reign, endeared himself to all his subjects by his wide human sympathy, by his unfailing devotion to duty and by his personal sacrifice for their general welfare,

—and was agreed to unanimously, all members standing.

The House thereupon immediately adjourned.

On February 7,[1] the Prime Minister said:

I have to inform the House that a Proclamation is being published to-day in a special issue of the *Government Gazette* proclaiming Her Majesty's Accession to the Throne, and I desire to make a statement on the arrangements in regard to the hoisting of flags on public buildings and the firing of guns on Friday February 8, and on subsequent days. The Government have decided to follow the same arrangements in this country in regard to the hoisting of flags on public buildings and the firing of guns as those laid down in a communication from the Lord Chamberlain to the Governor-General.

Accordingly there will only be one day of mourning in the Union, the day of King George's funeral, the date of which is not yet fixed.

The Lord Chamberlain's Message reads:

In accordance with Her Majesty's wishes orders have been given here that on Friday the 8th of February flags on public buildings should be hoist to masthead from 8 a.m. to sunset and royal salute fired at noon for Her Majesty's Accession stop Day following flags again half mast-high until the funeral date of which will be notified stop These orders relate to public buildings only stop At military flag stations here flags will remain half mast on the 8th February except for six hours following Proclamation of Accession when they will be flown mast-high N.P. music not to be played at military parades or ceremonies of a military nature until after the date of the funeral except at the Proclamation of Her Majesty's Accession stop 56 guns to be fired on the day of the funeral.

The Prime Minister then moved, as an unopposed Motion, seconded by the Leader of the Opposition:

That the following Address be presented to Her Majesty the Queen:

May it please Your Majesty:

We, the Members of the House of Assembly of the Union of South Africa, humbly tender to Your Majesty the heartfelt congratulations of the people of the Union of South Africa on Your Majesty's accession to the Throne.

As representatives of one of the free peoples in the Commonwealth of Nations we assure Your Majesty of our loyal attachment to Your Majesty's Throne and Person and we pray that Your Majesty may enjoy a long and peaceful reign under the blessing of Divine Providence.

The Prime Minister thereupon moved, seconded by the Leader of the Opposition:

That the above Resolution together with the Resolution adopted yesterday on the demise of His Majesty King George the Sixth be transmitted by Message to the Honourable the Senate in order that the Addresses of the House of Assembly may be adopted as Joint Addresses from both Houses of Parliament.

In the Senate.—The Senate, being under adjournment, met on Feb-

[1] *Ib.* 730.

ruary 25,[1] a similar Motion for an Address to Her Majesty the Queen, upon the death of King George VI, was moved by the Prime Minister, seconded by the Leader of the Opposition (Senator the Rt. Hon. G. Heaton Nicholls) which was in the same terms as that passed in the House of Assembly. The Motion was then agreed to *nemine dissentiente*, all members standing.

A like Resolution upon Queen Elizabeth's Accession to the Throne was moved as in the House of Assembly,[2] and the necessary Messages to the House of Assembly were ordered.

The actual texts of the Addresses were in the same form as those moved in the House of Assembly (*see above*) but with the insertion after " We " of the words " the President and Members of the Senate and the Speaker and ", the Joint Addresses being signed by the President, the Speaker, the Clerk of the Senate and the Clerk of the House of Assembly.

Proclamation of Accession.[3]—The Preamble to the Proclamation of Accession, which was dated February 7, and in the 2 official languages (Afrikaans and English), was signed by the Governor-General and the Prime Minister and was in the same terms as the Westminster Proclamation, but the remainder of the Proclamation read:

I, THEREFORE, do hereby publish and proclaim that the high and mighty Princess Elizabeth Alexandra Mary is now, by the death of our late Sovereign of happy memory, become our only lawful and rightful Sovereign, Queen Elizabeth the Second, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, Queen, Defender of the Faith, Sovereign in and over the Union of South Africa, to whom now all faith and constant obedience, with all hearty and humble affection are due; beseeching God, by Whom Kings and Queens do reign, to bless the Royal Princess Elizabeth the Second with long and happy years to reign over us.

The day of the King's funeral, February 15, was proclaimed, under S. 3 of the Public Holidays Act[4] as a Public Holiday throughout the Union.

Salutes were fired at the Administrative and the 4 Provincial capitals of the Union, both on the new Sovereign's Accession and on the day the late King was laid to rest.

The two official flags of the Union were flown on the Houses of Parliament and the principal Government Buildings in the Union. The Houses of Parliament and many buildings were draped in purple and black.

Memorial Services were held at St. George's Cathedral, Cape Town, on February 15, and at Churches of all denominations, City Halls, etc., throughout the Union.

Oath of Office.—There was no publication as to the taking of an Oath or making of an Affirmation by Ministers to the new Sovereign, but it is understood that at Government House, Cape Town, on February 27, the Judge-President of the Cape Division of the Su-

[1] 1952 MIN. p. 17. [2] *Assem. Hans.*, No. 3, 730, 1. [3] *Government Gazette Extraordinary*, Feb. 7, 1952. [4] No. 5 of 1952.

preme Court (Hon. Mr. Justice de Villiers) swore in the Governor-General, who in turn would administer either the Oath or Affirmation of Office to the Prime Minister and Ministers, the Affirmation reading:

I . . . do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth II, in the office of . . .[1]

Oath of Allegiance.—The same practice was followed in regard to the taking of the Oath of Allegiance to the new Sovereign as in the Commonwealth of Australia, the form as laid down in S. 51 of the South Africa Act, 1909,[2] in English and Afrikaans, being:

I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King or Queen (as the case may be) (*here insert the name of the King or Queen for the time being*) His (or *Her*) heirs and successors according to law. So help me God.

Ik, A.B., sweer trou en hulde aan sy Majesteit Koning of Koningin (soos die geval mag wees) (*voeg hier in die naam van die regeerende Koning of Koningin*) sy (*haar*) erfgename en opvolgers volgens wet. So help my God.

For the same reason as stated above in respect of Australia, sitting members of Parliament did not take this Oath or make Affirmation afresh. The South African Affirmation is as follows:

Affirmation of Allegiance: I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty King or Queen (as the case may be) (*here insert the name of the King or Queen for the time being*) His (or *Her*) heirs and successors according to law.

Ceylon.

On February 7, the Presiding Member in each House read a Message from the Governor-General, dd. February 6, that it was with profound sorrow that he had to inform them that His Majesty King George VI died peacefully in his sleep that morning.

A Minister then announced in each House that the Cabinet had already met and considered the above communication from the Governor-General and the Cabinet had accordingly directed that a Proclamation be issued the next day proclaiming Princess Elizabeth Alexandra Mary to be Queen by the style and title of Queen Elizabeth II, which Proclamation would be read from the steps of the House on February 8 at 5 p.m.

The Presiding Members in each House announced that they would take the Oath, and when taken they stated that there would be an opportunity for all honourable Senators (members) to take and subscribe the Oath or make and subscribe the Affirmation to Her Majesty the Queen. The Front Bench Members of the Government would do so first and hon. members need not get up when the Oath was taken.

[1] *Cape Times*, Feb. 27, 1952. [2] South Africa Act, 1909, S. 51 as amended by S. 7 of the States of Union Act (No. 69 of 1934).

Senators and Members of the House of Representatives then took and subscribed the Oath or Affirmation. The Oath or Affirmation of Office, sworn before the Governor-General, and the Oath and Affirmation of Allegiance sworn in both Houses of Parliament before the Clerk (*see below*).

The Hon. Sir J. Kotelawaler then announced that no further business would be transacted that day and the House was immediately adjourned until to-morrow.

On February 8,[1] the Prime Minister (Rt. Hon. D. S. Senanayake) moved the following Address of Condolence and Loyalty:

That this House do present the following Address to His Excellency the Governor-General:

We, the Members of the House of Representatives of Ceylon, request that Your Excellency be pleased to present our humble duty and loyal homage to Her Majesty the Queen, and to convey to Her Majesty an expression of our great and abiding sorrow at the grievous loss which Ceylon in common with the other members of the Commonwealth has sustained by the death of His Late Majesty King George VI, and of our hope that Her Reign will be one of great happiness and prosperity to the peoples of the Commonwealth.

That this House do present the following Address to His Excellency the Governor-General:

We, the Members of the House of Representatives of Ceylon, request that Your Excellency be pleased to send a Message of Condolence to Her Majesty the Queen Mother tendering to Her the sincere sympathy of the members of this House in the irreparable loss She has sustained. The people of Ceylon will always remember with gratitude the great interest which His Late Majesty took in all Commonwealth affairs and His high sense of duty in furthering the interest of the peoples of the Commonwealth.

Question was then proposed on the first paragraph of the Motion, after which the same procedure was adopted on the second paragraph, and agreed to.

The Prime Minister was supported by Dr. N. P. Perera, Mr. S. W. R. D. Bandarawaike, H. Sri Nissanka, Mr. S. Thondaman and Mr. C. Suntharaliangam, as representing the various Parties.

Proclamation of Accession.—This Proclamation, in the 3 languages, was ceremonially read from the steps of the Houses of Parliament in the presence of the Diplomatic Corps, Members of Parliament, and Government officials. On February 7, all Government offices, business houses, schools and shops were closed and flags were flown at half-mast throughout Ceylon. The Proclamation, signed by the Prime Minister and other Ministers of the Crown, was in the following form:

Whereas by the decease of our late Sovereign Lord KING GEORGE THE SIXTH, the Crown is by our laws solely and rightfully come to the High and Mighty PRINCESS ELIZABETH ALEXANDRA MARY:

We the Governor-General, the Prime Minister and the other Ministers of the Crown in Ceylon do now hereby, with one voice and consent of tongue

[1] *H. Reps. Hans.*, Vol. II, No. 18, 1553.

and heart, publish and proclaim that the High and Mighty PRINCESS ELIZABETH ALEXANDRA MARY is now, by the death of our late Sovereign of happy memory, become our SOVEREIGN QUEEN by the name and style of ELIZABETH THE SECOND, to whom her lieges do acknowledge all faith and constant obedience with hearty and humble affection.

The Oath of Office was sworn before the Governor-General and the Oath of Allegiance to members of both Houses of Parliament before the Clerk of each House. The form of the two Oaths were as follows:

Oath of Office: I . . . do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Minister of . . . So help me God.
Oath of Allegiance: I . . . do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors according to Law. So help me God.

There was no funeral service, as in a country with such a diversity of religions as Ceylon, neither Prayers are said in the House nor services held on the occasion of any important event.

Pakistan.

The following actions were taken by Pakistan in connection with the death of King George VI and the Accession of the new Sovereign: *Notification of the death of King George VI.*—The Government of Pakistan announce with the deepest regret the demise of His Majesty King George the Sixth, King of Great Britain, Ireland, and the British Dominions beyond the Seas, Defender of the Faith.

The Government of Pakistan hereby direct that the Officers of the Civil, Naval, Military and Air Force Services of Pakistan do put themselves into mourning until further orders.

The flag on all ships and Government buildings will be hoisted at half-mast until further orders and 56 minute-guns will be fired at principal Stations at 08-00 hours on Thursday, the 7th February, 1952. All Government Offices will remain closed on that day.[1]

The Government of Pakistan have decided that two minutes' silence will be observed throughout Pakistan at 09-00 hours on Friday, the 15th February, 1952, the day of the funeral of His Late Majesty King George the Sixth. A salute of 56 guns will be fired at 10-00 hours the same day.

All flags will fly at half-mast till the day of the funeral. Official mourning will continue to be observed until the 19th February, 1952, inclusive.[2]

Proclamation of Accession.—This Proclamation, which was signed by the Secretary to the Government of Pakistan, read as follows:

The Governor-General proclaims that Her Majesty Queen Elizabeth the Second is now become Queen of Her Realms and Territories and Head of the Commonwealth.[3]

[1] *Gazette of Pakistan Extraordinary*, Feb. 6, Public Notice No. 1, '52.
[2] *Ib.* Feb. 13, Public Notice No. 16. [3] *Ib.* Feb. 8, Public Notice No. 16.

Resolution of Condolence.—On March 14,[1] the Constituent Assembly (Legislature) met in the Assembly Chamber, Karachi, this being the first day of the Ninth Session of the Constituent Assembly.

The Leader of the House (Hon. Khwaja Nazimuddin) moved:

This House expresses its feeling of sorrow and grief at the sudden and untimely death on February 6, 1952, of His Late Majesty King George the Sixth, King of the United Kingdom and Head of the Commonwealth of Nations,

—which Motion was supported by Shri Sris Chandra Chattopadhyaya, the Leader of the Opposition, and agreed to.

The members then rose in their seats and observed silence for 2 minutes, and after Mr. President had announced that action would be taken as directed in the Resolution, he added:

I think, in honour of the memory of the late King, it will be meet and proper to adjourn the House to-day.

The House then stood adjourned until the following day.

There was no funeral service for the Members of Parliament, and no fresh Oaths were taken by the Ministers or members on the Accession of the new Sovereign.

India.[2]

Although India under her Republic owes no allegiance to the Queen, the Government of India, in informing the other Commonwealth Governments in 1949 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."

When addressing the two Houses of the Canada Parliament at Ottawa on October 24, 1949, Shri Jawaharlal Nehru, the Prime Minister, 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.

In referring to the death of King George VI *The Times*[3] reported that India heard the news of the King's death with as deep a sense of sorrow as any other part of the Commonwealth. In spite of recent political changes, the tradition of personal rule still makes a strong appeal to many Indians, who like to regard the head of the State as " the father and mother " of his people.

Thus, although the tie of allegiance was loosened, when India became a Republic 2 years ago, the bonds of respect and esteem for the Royal Family remained strong.

[1] *Pak. Hans.*, Vol. I, 193.
[2] *See also* JOURNAL, Vol. XVIII, 224, 5.
[3] Feb. 7, 1952.

As soon as the news became known this afternoon, the national flag was lowered to half-mast on all official buildings, and in some places it appeared side by side with the Union Jack. Parliament adjourned its sitting immediately after the Prime Minister had given expression to the nation's sentiments.

"It is a significant thing in this world of republics," he said, "how the British Royal House has stood firm—firm not merely in law, but firm in the affections of the people of the United Kingdom. . . . I request you, Mr. Speaker, to convey to Her Majesty Queen Elizabeth II the sense of our deep sorrow at this event."

The House showed its respect by standing in silence for one minute. Afterwards Parliament adjourned until Friday. All official entertainments were cancelled, and it was likely that the following day (February 7) would be observed as a day of national mourning.

V. REGENCY ACTS, 1937 AND 1943

By George Phillips Coldstream, C.B.,
Deputy Clerk of the Crown in Chancery.

King George VI's illness in the autumn of 1951 necessitated the use once again of the powers of the Regency Acts, 1937 and 1943, to appoint Counsellors of State. The decision was indeed inevitable in the circumstances, and notwithstanding the remarkable temporary recovery which his late Majesty made, there was general relief that steps had been taken tending to relieve him from at any rate some measure of anxiety during the ordeal through which he was passing.

Articles have already appeared in this JOURNAL[1] considering in detail the provisions of s. 6 of the Act of 1937 as amended in 1943. It is worth recording here that the section operates (so far as material) in the event of a partial incapacity of the Sovereign, as opposed to the total incapacity which is provided for by s. 2 of the Act. The power of delegation to Counsellors of State extends only to functions relating to the United Kingdom, colonies,[2] trust territories, mandated territories, protected states and protectorates: it does not extend to the "self-governing" countries of the Commonwealth. It will be recalled, further, that although the power to delegate the Royal functions for the period of illness or absence to Counsellors of State is in general terms, there is a specific exception in the case of the dissolution of Parliament, which cannot be dissolved by Counsellors of State otherwise than on the "express instructions" of the Sovereign "which may be conveyed by tele-

[1] *See* Vols. VI. 89; IX. 12; XI-XII. 80.

[2] E.g., *see* Editorial hereof: "Mauritius."—[ED.]

graph". Moreover, no grant of any rank, title, or dignity of the peerage may be conferred by Counsellors of State.

On September 27, 1951, King George VI, by Letters Patent under the Great Seal, appointed The Queen, Princess Elizabeth, Princess Margaret, the Duke of Gloucester and the Princess Royal, to be Counsellors of State "during the period of Our illness": the three Princesses and the Duke being the four persons (excluding persons disqualified from being Counsellors by the section) then next in the line of succession to the Crown. The Letters Patent provided that the Royal functions therein specified were to be exercised jointly by not less than two of the number of Counsellors. Apart from the special exceptions in regard to the dissolution of Parliament and the granting of ranks, titles and dignities of the peerage mentioned above, the Letters Patent commanded the Counsellors not to receive homage and not to approve and sign "any warrant, fiat, submission or other document set out in the Schedule hereunto annexed". The Schedule specified—

> "Warrants fiats submissions and other documents for which His Majesty's approval is required for or in connection with any of the following purposes:—
>
> Awards of honours decorations and medals
> Precedence to rank among nobility
> The use by British subjects of foreign titles and the wearing of foreign Orders in the United Kingdom
> Issue of writs in Peerage claims for the determination of abeyances
> Disbandment of Regiments and other Army Units and changes in Army and Air Force dress
> Matters arising in connection with the General Assembly of the Church of Scotland
> Amendment of Statutes of Orders.

The special provision about the powers of dissolving Parliament became, in the events which happened, of immediate moment. For Mr. Attlee in his broadcast on September 18, 1951, had already announced that he intended to advise the Sovereign to dissolve Parliament so that he might go to the country. In his announcement Mr. Attlee stated that he proposed to ask for a dissolution on October 5, and for a new Parliament to be summoned for October 31, 1951. Accordingly, by virtue of a Commission signed on behalf of The King by Queen Elizabeth (now The Queen Mother) and Princess Elizabeth as Counsellors of State, Parliament was Prorogued from October 4 to October 23, 1951. On October 5 Parliament was dissolved. It is interesting to recall that on that day King George himself held a Privy Council at Buckingham Palace for the purpose of issuing a Proclamation for the dissolution of Parliament, and the calling of a new one, as recorded in the *London Gazette* for Tuesday, October 9, 1951. At the same Privy Council a Proclamation was issued for the election and summoning of the sixteen Representative

Peers of Scotland, and a number of other Orders in Council connected with the summoning of the new Parliament were also then made.

During the ensuing weeks his late Majesty's health improved and on a number of occasions he exercised some of the Royal functions himself, until towards the end of November it seemed that he had sufficiently recovered to resume them entirely. No doubt there is a distinction in this regard between the delegation of powers for the purpose of the Sovereign's illness and the delegation of powers during absence or intended absence of the Sovereign from the United Kingdom. In the latter case it is plain enough at what moment of time the necessity for the delegation of Royal functions has ceased. In the former, the circumstances render expedient an express revocation of the delegated functions under the powers provided by s. 6 of the Act of 1937. On December 7, 1951, King George signed a Warrant for the revocation of the Letters Patent of September 27, 1951.

The occasion never again arose for the delegation of powers during his late Majesty's reign. No doubt if his intended voyage to South Africa in the late spring of 1952 had taken place a further delegation of the Royal functions would have been made. Perhaps, in such circumstances, an exercise of the special powers to give authority by telegram to the Counsellors of State to dissolve Parliament might possibly have arisen.

Since the passing of the Act of 1937 the wisdom of Parliament in providing for the appointment of Counsellors of State to exercise the Royal functions during temporary absence of the Sovereign or during temporary incapacity through illness, has been abundantly manifested. Not only is it necessary to make provision for illness, so that the Sovereign may then be afforded the fullest possible relief from care and pressure of work, but in modern times the journeyings of the Sovereign about the Commonwealth will, so far as can be foreseen, often require the delegation of the Royal functions.

VI. POWERS OF THE HOUSE OF LORDS

By Henry Burrows,
Principal Clerk of Public Bills, House of Lords.

Introduction.—If nowadays the man in the street is asked, "What does the House of Lords do?" it is probable that he would answer, "They cannot do anything, but on occasions they talk very well". Before the passing of the Parliament Act in 1911 nobody would have spoken in this way about the powers of the House of Lords. To what extent, therefore, does the practice of Parliament since the

passing of that Act justify the impression left on the man in the street?

Moreover, it may be of use to Commonwealth and Empire countries possessing two Chambers to consider the part which the second Chamber (House of Lords) plays in forming, with the elected Chamber (House of Commons), the "legislative assembly of the kingdom, by whose advice, consent and authority, with the sanction of the Crown, laws are made".[1] For this purpose it is unnecessary to consider the special position of the House of Lords in proceedings upon Personal Bills, Bills of Attainder and Impeachment[2] and legislation initiated primarily by the Crown.[3] Nor is it relevant to give the duties of the House of Lords as the supreme court of appeal from other courts of justice. These are all derived from the historical origin of the House as the *concilium regis*, and would have no counterpart in a newly constituted second Chamber.

It is not proposed either to examine in detail the provisions of the Parliament Acts of 1911 and 1949.[4] To understand the main restrictions imposed by these Acts on the House of Lords requires only a study of the Acts in question. The intention, however, is to consider section 6 of the Act of 1911, which states that "nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons". It is with the exercise by the Lords of their legislative powers, in conjunction with these rights and privileges of the Commons, that this article proposes to deal.

Parliament Acts.

The effect of the Parliament Acts of 1911 and 1949 on the powers of the House of Lords over legislation is that, if the Commons insist—

(*a*) a public Bill (certified as a Money Bill under the Act of 1911) shall (notwithstanding that the House of Lords have not consented to it) become an Act of Parliament after the lapse of one month from the time it is sent to the House of Lords;

(*b*) a public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) shall become an Act of Parliament notwithstanding that the House of Lords have rejected it in two successive sessions; provided that at least one year has elapsed between its Second Reading by the Commons in the first of those Sessions and its passing by the Commons in the second of them; and

(*c*) the privileges of the Commons shall remain unimpaired.

Taxation, money or loans raised by local authorities or bodies for local purposes are not among the matters constituting a Money Bill.

[1] May, XV, p. 36. [2] *Ib.* pp. 873, 38, 39. [3] Stubbs, Vol. III, p. 461.
[4] *See* S.C.E.P. JOURNAL, Vols. XVII. 136-180; XVIII. 29, 30.

There has been no instance of the Lords rejecting a Money Bill. They could do so. But the Bill would become law at the end of a month, despite its rejection by the Lords, if the Commons presented it for the Royal Assent.

The Commons have accepted amendments from the Lords to Money Bills on two occasions—the China Indemnity (Application) Bill, 1925, and the Inshore Fishing Industry Bill, 1946. In the first case the amendment was in furtherance of the objects of the Bill, in the second the amendment was drafting.

In the case of the Safeguarding of Industries Bill, 1921, a Money Bill, which was heavily amended by the Lords, the Commons did not avail themselves of their statutory rights under the Parliament Act, but preferred to rely on their ancient privileges, rejecting the Lords amendments *en bloc* on grounds of privilege. It is these privileges, undefined by the Acts, which will be examined.

Rights and Privileges of the Commons.—The " existing rights and privileges of the Commons " refer to those privileges claimed by the Commons in regard to finance. Before stating what these privileges amount to it must be remembered that, broadly speaking, they now apply only to financial provisions in public, as opposed to private, legislation.[1] They do not extend either to provisions in public legislation imposing fees and pecuniary penalties[2] nor to legislation controlling funds set apart for general, but not public, utility, such as the revenues of the Church or Land revenues of the Crown which are not consigned by Statute to the Consolidated Fund. Provisions conferring powers of taxation in Bills dealing with the constitutions of Dominions or other parts of the British Empire are also outside the scope of privilege.[3] These subjects no longer involve the financial privileges of the House of Commons, and both Houses have equal power to originate or amend Bills dealing with these matters.

The privileges now claimed by the Commons in finance contained in public legislation may be summarised under four heads—

(1) The right of granting supplies to the Crown is in the Commons alone; consequently all Bills for granting supplies must originate in the Commons.
(2) It is the sole right of the Commons to impose and remit taxes; consequently the Lords ought not to alter or amend them.
(3) No public Bill involving a charge in taxes or rates should originate in the Lords.
(4) The Lords should not amend any proposal in a Commons Bill so as to alter any charge, the mode of levying, duration, management, distribution or collection.

The Lords have tacitly accepted numbers (1), (2) and (3). As regards (4), the Lords claim the right to amend even financial provisions in a public Bill where the amendment is primarily on the

[1] H. of C.S.O. 191. [2] *Ib.* 55. [3] May, XV, p. 781.

grounds of public policy and the Bill has not been introduced as a measure of finance. These four heads will be discussed separately.

(1) The granting of supplies is in the Commons alone.

Originally the Lords, Commons and Clergy voted their grants separately and without communication. The Clergy continued to do so till 1664, but from a very early date the Lords and Commons joined together, the principle being "The Commons grant, the Lords assent". This principle is defined in the "Indemnity of Lords and Commons" in 1407 under which grants are to be reported "in manner accustomed, by the mouth of the Speaker of the Commons, the Commons granting, the Lords assenting".

In 1628 the Commons sent up a subsidy Bill to the Lords, in the preamble of which the Commons only were mentioned. The Lords objected and conferences were held. The Lords maintained that "as the Commons give the subsidies for themselves and for the representative body of the Kingdom, so the Lords have the disposition of their own". Ultimately the Lords passed the Bill but retained it, contrary to usage "to which much exception was taken"; but nevertheless the Speaker presented it to the King for Royal Assent. This form of preamble "Most Gracious Sovereign, we . . . the Commons, etc., etc." has been retained in supply Bills ever since.

In 1640 the Commons resolved that it was a breach of the privilege for the Lords to have expressed to the Commons their opinion that in view of the urgency of the King's affairs the Commons should grant the King a supply before proceeding to other matters. The Lords declared that this was no breach, and Parliament was dissolved.

The Commons re-affirmed their privileges at the Restoration in 1660, and from that time the practice with regard to Bills of supply has been that in the preamble the Commons alone are stated to make the grant—when they have passed the Bill they send it to the Lords for their concurrence, the Bill is then returned to the Commons and the Speaker presents it for Royal Assent.

Messages from the Crown asking for supplies are addressed to both Houses; the Commons being asked to grant the supplies, the Lords to concur, and the principle is preserved in the Sovereign's speeches at the opening of the Sessions of Parliament.

(2) Lords should not amend a supply Bill.

In the 17th century there are some instances of the Commons accepting Lords amendments to a supply Bill. They appear to fall into three categories—

(*a*) the Lords amendments were for the purpose of preserving to peers their ancient right of assessing themselves;
(*b*) the amendments were in furtherance of the Bill or to correct clerical errors;

(*c*) the Commons acceptance was due to the "present necessity cast upon them by the shortness of the session".

In general, however, the Commons maintained their privilege against amendments of a substantial character and did not permit amendments of the first category after 1692 (Land Tax Bill, January 17, 1692).

A long dispute took place in 1671 when the Lords amended a tariff Bill. The Commons resolved *nem. con.* that in all aids given by the Commons to the King the rate or tax ought not to be altered by the Lords. The Lords resolved that "the power exercised by them is a fundamental, inherent and undoubted right of the House of Peers from which they cannot depart". Conferences took place at which precedents were reviewed. The Commons replied at great length and Parliament was dissolved.

A further dispute occurred in 1689 when the Lords reduced duties on tea and coffee. The Commons protested and the Lords replied "they conceive it has always been their undoubted right to lessen the rate or tax granted by the Commons". The Commons negatived the amendments *nem. con.*

In 1692 the Lords amended a Land Tax Bill by providing that the taxes to which peers were liable should be collected by their own collectors. The Commons objected and the Lords did not insist owing to "shortness of time".

Good statements of the Commons claims are to be found in 1678, "The rights of the Commons in the granting of money"[1] and in 1700 over Lords amendments to the Irish Forfeitures Bill.[2]

At this period the Commons adhered to their claims and usually either the Lords gave way or a prorogation took place. Later, instead of disagreeing, the Commons either rejected the Bill or ordered it to be laid aside, occasionally introducing a new Bill incorporating the Lords amendments.

In 1700 the Lords amended clauses in the Land Tax and Irish Forfeitures Bill dealing with the incapacity of the commissioners for sitting in Parliament. The Commons disagreed. The Lords insisted on their amendments, holding that the question of the qualifications

[1] "That all aids and supplies and aids to H.M. in Parl[t] are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords."

[2] "For that all aids and supplies granted to H.M. in Parliament are the sole and entire gift of the Commons; so it is the undoubted and sole right of the Commons to direct, limit and appoint in such Bills the ends and purposes, considerations, limitations and qualifications of such grants which ought not to be changed or altered by Your Lordships. This is well known to be such a fundamental right of the Commons that to give reasons for it hath been esteemed by our ancestors to be a weakening of that right. The Commons therefore leave the Bill and the amendments with Your Lordships, together with the ill consequences of not passing the Bill."

of members should be in a separate Bill to itself. The Commons persisted in their disagreement and Parliament was prorogued.

In 1702 the Lords passed their Standing Order condemning the practice of annexing to a supply Bill clauses foreign to the matter of the Bill.[1] This action has been regarded as admitting their inability to amend bills of supply.[2]

In 1807 in the cases of two Bills, the Malt Duties Bill and the Custom Duties (Ireland) Bill, the Standing Order on tacking was read and the Bills rejected.

For upwards of two centuries the Lords have respected the Commons privilege under this head and have not amended a supply Bill.

(3) Lords should not initiate a public Bill involving charges.

In 1661 the Westminster Paving Bill was passed by the Lords and sent to the Commons, who ordered it to be laid aside as imposing a charge. The Commons took the same course with the Highways Bill in 1664. There are a number of similar cases down to 1850.

In 1860 notice was taken in the Commons that the Divorce Court Bill contained a provision for the payment out of moneys provided by Parliament of certain expenses of the King's Proctor. The Speaker said that since 1854 similar provisions had appeared in Lords Bills; this was open to serious objection as calculated to break down the distinction between the duties, attributes and powers of the two Houses. He would advise the House not to receive them in future. From the debate that followed it appears that when Bills were written in MS. incidental financial provisions were struck through when the Bill was sent to the Commons. Later when Bills were printed, they were printed in red ink. More recently they had been sent down in ordinary black print. The Speaker pointed out that his ruling would not put an end to red ink clauses but would confine them to proper limits. These clauses would come down to the Commons as suggestions and not as enactments.

The present practice is for Lords Bills to be examined in the public bill offices of the two Houses and the financial provisions which, if sent down in the Bill from the Lords, would constitute an infringement of Commons privilege, agreed upon. These are omitted in the Lords on Third Reading as privilege amendments. In the official copy of the Bill, printed for the Commons, these provisions are omitted and blank spaces left for them. In the paper prints of the Bill the provisions are printed in square brackets and underlined and a note is printed on the Bill to the effect that the words so printed were omitted by the Lords to avoid infringement of privilege.

[1] S.O. LII. No clause to be annexed to a Bill of Aid or Supply foreign to the matter. 9 Dec. 1702. The annexing any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to and different from the matter of the said Bill of Aid or Supply, is unparliamentary, and tends to the destruction of the constitution of this Government.

[2] May, XV, p. 779.

There are various forms of privilege amendment depending on the nature of the Bill. Sometimes a clause is inserted to negative any financial charge, but this practice cannot be used to cloak the introduction in the Lords of Bills containing financial provisions which are other than incidental and subsidiary,[1] and numerous cases have arisen of Bills being withdrawn or not proceeded with in the Lords on an intimation being received that they would not be received in the Commons. The privilege amendments are reversed in the Commons so that the financial provisions are sent up from the Commons as Commons amendments, to which the Lords are asked to agree.

The same procedure has been used to safeguard a Lords amendment to a Commons Bill. In 1846 the Lords extended the scope of the Contagious Diseases Prevention Bill, which they had received from the Commons, to include Scotland, but added a proviso that the rating power under the Bill should not be so extended. The Commons disagreed to the proviso and thus the whole Bill, including its rating provisions, was extended to Scotland. So also an amendment to the Education Bill, 1902, concluded with the words, "but this obligation . . . shall throw no additional charge on any public funds", which words were struck out by the Commons.

(4) The Lords should not amend any proposal in a Commons Bill so as to alter any charge in taxes or rates, or the mode of levying, duration, management, distribution or collection.

The Commons maintained a rigid insistence on their claims under this heading until about 1830. It was realized that this often resulted in inconvenience; many Bills were lost and frequently new Bills had to be introduced, sometimes incorporating the amendments which the Commons had felt obliged to reject. Further, so far as rating provisions were concerned, the Lords were deprived of an effective voice in legislative proposals of public policy. From this time, as will be shown, there has been a relaxation of their claims as regards pecuniary fees and penalties in certain cases, and in respect of private and Provisional Order Bills; and the Commons have often waived privilege in respect of rating provisions. At the same time the Lords have endeavoured to find means where possible of avoiding acute questions of privilege.

The present position is that the Lords claim and exercise the right to amend Bills of this character, but they recognize that, where their amendments are found to infringe Commons privilege, the Commons may reject them on these grounds.

In 1662 the Lords inserted two provisos in a Highways Bill concerning the erection and repair of two bridges. The Commons declared that a charge would thereby be laid on the people "which should first be considered here".

[1] An exception to this is the Poor Relief Bill, 1868, introduced in the Lords, *see* C.J., 123, p. 262. The British North America Bill, 1867, the Road Traffic Bill, 1930, and the Land Drainage Bill, 1930, were also introduced in the Lords.

In 1690 the Lords amended a Corn and Navigation Bill by imposing a £10 penalty and in 1691 they amended the Mutineers Bill. The Commons disagreed in both cases, declaring in the latter case "that it is the undoubted right of the Commons only to appoint pecuniary mulcts and the distribution of them".

There are several similar cases towards the end of the 17th century, the Lords insisting on their rights and the Commons denying them, and the Bills being lost unless the Lords gave way. Ultimately in 1831 the Commons passed a resolution enabling the Lords to deal by Bill or amendment with pecuniary penalties and fees in furtherance of the execution of the Bill and when not payable into the Exchequer in both public and private Bills. This was confirmed by Standing Order in 1849, which also enabled the Lords to deal with rating provisions in local and Provisional Order Bills, which referred to tolls and charges for services performed and were not in the nature of a tax; and as a result of debates in 1838, 1847 and 1849 the Commons have frequently waived privileges as regards rating provisions where the effect of the amendment on charges was incidental and the purpose of the amendment was legislative rather than fiscal.

The fact, however, that a Lords amendment would be outside the terms of the Commons Financial Resolution on which the Bill is founded does not debar the Lords from making the amendment, nor the Commons from accepting it if they desire to do so.

The Commons have waived privilege and considered the Lords amendments on their merits in the following cases: —

1. Where the amendment affects charges incidentally only and is not made with that object—

   Pawnbrokers Act, 1791-2 (Hatsell iii. 155).
   Industrial Schools Bill, 1861.
   Sea Fisheries Bill, 1868.

2. Where the amendment is the omission of a "whole subject" which might have been the subject of a separate Bill to itself which the Lords could have rejected—

   Parliamentary Representation Bill, July 30, 1867.
   Dublin Police Bill, 1839. (The Speaker refused to allow an amendment to a clause but said the Lords could strike out the whole clause. The Commons restored the clause, amending it as the Lords had wished.)
   Roads and Bridges (Scotland) Act, 1878, Amt. Bill, 1888.
   Agricultural Land Utilization Bill, 1931.

3. Where the amendment can be completed by a consequential amendment made by the Commons—

   Courts of Justice (Building) Act, 1865. (The Lords struck out a clause transferring Southampton Buildings to the Commissioners of Works. It was held that this need not be a breach of privilege since the Commons could by a consequential amendment strike out another clause granting £200,000 for the erection of new Courts as equivalent of the buildings transferred.)

4. Where the amendment is in furtherance of the Commons intentions or to correct errors in drafting—

   Chains, Cables and Anchors Bill, 1874.
   Metropolitan Board of Works (Money) Bill, 1882.
   National Debt Bill, 1883. (This was a supply Bill.)

5. Where the amendment is a re-enactment of existing law—

   Naval Agency and Distribution Bill, 1864.
   Sea Fishing Boats (Scotland) Bill, 1866.

6. Where the expenses referred to are payment for work done—

   Naval Prize Bill, 1864.

7. Matters of appeal, which are held to be administration of justice rather than taxation—

   Valuation of Rateable Property (Ireland) Bill, 1864.
   London City Tithes Bill, 1864.

8. Where the amendment incidentally affects rating provisions—

   Poor Law Bill, 1836.
   Municipal Corporations (Ireland) Bill, 1838.
   Poor Law (Ireland) Bill, 1838.
   Poor Relief (Ireland) Bill, 1847.
   Landed Property (Ireland) Bill, 1847. (Amendment refused as affecting general taxation.)

The Commons, as stated at the beginning, do not claim privilege in respect of funds set apart for general, but not public utility, *e.g.* Queen Anne's Bounty or the Miners' Welfare Fund; nor in the past in respect of Dominion and Imperial matters—

South Africa Bill, 1909
India (Estate Duty) Bill, 1945 } (introduced in Lords).

When the Commons have disagreed to Lords amendments on the grounds of privilege, the Lords have given way or the Bill has been lost. In recent times, except in one instance[1] the Lords have acquiesced to the hint of privilege conveyed in the Commons reasons, but have on occasions passed resolutions stating that while not insisting on their amendments they do not accept the Commons reasons or consent that they should be drawn into a precedent and that they maintain their right to legislate upon the matters in question. See—

Elementary Education Bill, 1891, L.J. 123, p. 425.
Labourers (Ireland) Bill, 1906, L.J. 138, p. 337.
Old Age Pensions Bill, 1908, L.J. 140, p. 346.
Development and Road Improvement Funds Bill, 1909, L.J. 141, p. 455, and debates on Safeguarding of Industries Bill, 1921 (Lords Debates, Vol. 46, cols. 672, 987).

[1] The Lords insisted on an amendment, to which the Commons had disagreed on grounds of privilege, to the Unemployment Insurance Bill, 1930. This is a unique case. In modern times the Lords have invariably accepted the hint of privilege; earlier when they insisted the Commons laid the Bill aside. On this occasion the Prime Minister admitted that the Lords had put the Commons "in a fix". The Commons amended the Lords amendment.

The conclusion is that while the Commons adhere to their claim to absolute independence in all matters affecting finance even remotely, in practice if they find the Lords amendments desirable in themselves they will find a reason for not invoking privilege. In any Bill to which a number of Government amendments are moved in the Lords it will be found that many of them are infringements of privilege. In these cases privilege is not asserted; the amendments are accepted and the Speaker directs a "special entry" to be made in the Journals stating the reasons why this course was taken. Broadly speaking, privilege is only invoked in cases where the Government wish to resist the amendment. To this extent it is used as a convenient weapon by the party having a majority in the House of Commons, though it cannot be doubted that any amendment which was designed to affect charges directly and not as incidental to proposals of public policy would be resisted by the Commons as a whole.

Conclusion.

"They cannot do anything" is not therefore a true assessment of the powers of the House of Lords. On private Bill legislation the work is shared equally between the two Houses, and both Houses have equal power. Over public Bill legislation the powers of the House of Lords are restricted by the Parliament Acts and the privileges of the Commons in finance. Nor is the second Chamber called upon to exercise the same influence, because public legislation of a controversial character is nearly always introduced in the House of Commons. The legislative powers of the House of Lords therefore consist mainly in revision; and it is on the elected Chamber that rests the main burden in formulating the public general statutes of the realm.

VII. THE TAKING OF THE OATH BY MEMBERS OF THE HOUSE OF COMMONS ON THE DEMISE OF THE CROWN

By M. T. Ryle,
An Assistant-Clerk to the House of Commons.

The History appears to be this:—

Meeting of the House, etc.—From 1707 (Succession to the Crown Act) until 1867 (Representation of the People Act) the House of Commons had a statutory obligation to meet immediately after the death of the Sovereign, and it took the various Oaths prescribed (*see below*). Then after a period, not exceeding six months, during which they could dispose of essential business, they had to dissolve, and elections had to take place. The new Parliament took the Oath again in the usual way.

By the Act of 1867, the part of the 1707 Act making a dissolution

after six months compulsory was repealed, and Parliament could now continue to sit for its normal term. The House still met, and Oaths were sworn as soon as possible after a demise, even if in recess. This is still the practice.

The methods of taking the Oath.—The way the Oath is taken has also changed. By 5 Eliz. c. 1 (Supremacy of the Crown Act, 1562), 7 Ja. I c. 6 (Oath of Allegiance, etc., Act, 1609), and I Will. and Mar. c. 8 (Oaths of Allegiance and Supremacy Act, 1688) it was obligatory for members to take the Oath administered by the Lord Steward (in earlier records referred to as the Lord High Steward). This was administered at the beginning of each Parliament and also (after 1707) after the death of the Sovereign, at first in the Rooms of the Clerk of the House, and later in the Long Gallery, to the Speaker and as many other members as attended. The speaker and those members were in their turn, by a Deputation, or Commission, under the hand and seal of the Lord Steward empowered to administer the Oath to other members in the House itself.

Despite these provisions for taking the Oath, it was also laid down by 3 Cha. II c. 1 and I Will. and Mar. c. 8 (Oaths of Allegiance and Supremacy Act, 1688) that members must also take the Oaths prescribed, in the Chamber itself, standing at the Table of the House. This again took place after a royal death.

Up till the death of George IV in 1830, therefore, this double Oath-taking process was carried out. At the death of George III, for instance, in 1820, first of all in the Long Gallery, the Clerks being present, the Lord Steward administered "the Oaths appointed to be taken by members returned to serve in Parliament". Then the Lord Steward, by a declaration of Deputation (appended to the Journals) appointed the Speaker and leading members (including Castlereagh, Canning, Palmerston, Peel and Huskisson) "or any six, five, four, three, or one of them . . . to tender and administer the Oaths mentioned in a Statute made in the first year of the Reign of their late Majesties King William and Queen Mary, intituled 'An Act for removing and preventing all Questions and Disputes concerning the assembling and sitting of this present Parliament'" and also Oaths mentioned in 7 Geo. II c. 17 (Parliamentary Elections (Scotland) Act, 1733) and in another Act of the Sixteenth Year of the Reign of George II (presumably 16 Geo. II c. 11 (Parliamentary Elections Act, 1742)) "directing the said Oath to be taken before me". Finally the Speaker and members returned to the Commons, and first the Speaker alone and then other members took "The Oath of Allegiance and Supremacy, and made and subscribed the Declaration, and took and subscribed the Oath of Abjuration, according to the Laws made for those purposes". (C.J., 1819-1820).

In 1831, though, the procedure was changed. 1 and 2 Will. IV, c. 9 (House of Commons Oaths Act, 1831) realizing, as it says in the preamble, that "such Repetition of the same Oath is unnecessary

and inexpedient", abolished the administration of the Oath by the Lord Steward, and so also by his Deputation, while not relieving the members of their obligation to take the Oath in the Chamber itself. At the death of William IV, therefore, in 1837, this Act became relevant, and the arrangements on the day of the King's death, and the following days, were much as they are to-day. The Act of 1831 was actually repealed by a codifying Act of 1871 (Promissory Oaths Act, 34 and 35 Vict. c. 48) which nevertheless made provision for the continuation of usual practices; the taking of but the one Oath at the beginning of Parliament was presumably regarded by them as the normal practice.

The Oaths and their Standing.—The forms of Oath have varied from time to time, but the principal ones are as follows:—

The Oath of Supremacy (1 Eliz. I c. 1)

I, A.B., do utterly testify and declare on my conscience, that the Queen's Highness is the only Supreme Governor of this Realm . . . and therefore I do utterly renounce and forsake all foreign Jurisdiction, Powers, Supremities, and Authorities, and do promise, that, from henceforth, I shall bear Faith and True Allegiance to the Queen's Highness, her Heirs and Lawful Successors, and to my Power shall assist and defend all Jurisdictions, Preheminence, Privileges and Authorities, granted or belonging to the Queen's Highness, her Heirs and Successors, or united and annexed to the Imperial Crown of this Realm.

The Oath of Allegiance (7 Ja. I c. 6)

This Act ordered that members should take the Oath prescribed in 3 Ja. I c. 4. This Oath abjures allegiance to the Pope, etc., and goes on:—

I will bear Faith and True Allegiance to his Majesty, his Heirs and Successors.

The New Oath of Allegiance (1 Will. & Mar. Sess. 1 c. 8)

Both these Oaths were replaced by a new Oath of Allegiance, which was shorter and simpler, as follows:—

I, A.B., do sincerely promise and swear that I will be faithful and bear true Allegiance to their Majesties King William and Queen Mary.

These Acts were all repealed by 34 and 35 Vict. c. 48 (Promissory Oaths Act, 1871).

The Current Oath of Allegiance.—The Parliamentary Oaths Act of 1866 laid down a form of Oath for Members without mentioning "Heirs and Successors" but promising to support the "Succession of the Crown". This in its turn was replaced by the Remission Oaths Act, 1868, which prescribed the current Oath of Allegiance, namely:

I . . . do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God.

It was, however, authoritatively stated in 1937[1] that the taking of the Oath after the demise of the Crown now rests upon the custom of

[1] 319 *Com. Hans.* 5. s. 672.

Parliament, for which the form of some of the above Oaths perhaps accounts.

A member who desires to do so may take the Oath in this form, but the ordinary form is prescribed by section 2 of the Oaths Act, 1909. Under this section the person taking the Oaths says, "I swear by Almighty God that . . ." followed by the words of the Oath prescribed by law above.

Members who object to being sworn on religious grounds may instead make a solemn affirmation as follows:—

I . . . do solemnly, sincerely, and truly declare and affirm, that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law.

Miscellaneous.—In addition to those mentioned, there were a number of other forms of Oath prescribed in the XVIII Century and early XIX Century, none of which directly demand loyalty to Heirs and Successors, but were similar in form to the Act of 1866. Many of the Hanoverian Oaths included repudiation of the Stuart and Catholic lines.

VIII. CHANGES IN THE STANDING ORDERS OF THE HOUSE OF COMMONS, 1947-48[1]

By D. A. M. Pring, M.C.,
Senior Clerk of the House of Commons.

In order to study the changes in Standing Orders that had been temporarily introduced during the war or were considered necessary in view of the changed circumstances after the war, a Select Committee on Procedure was set up in 1945 and it published 3 Reports in that and the following year. As a result of the recommendations contained in the Reports, considerably modified by their own views on the subject, the Government introduced and enacted in 1947, 10 new Standing Orders, re-enacted 2 that had previously lapsed, and amended 12 others. In July, 1948, 2 more new Standing Orders—each concerning the Scottish Standing Committee—were agreed to. The purpose of this Article is to summarize the changes in procedure that these years saw.[2]

Arrangements for Sittings, etc.—S.O. 1 (*Sittings of the House*) was amended to lay down new hours of sitting which were considered more generally convenient; the House's hour of meeting on Mondays to Thursdays was to be 2.30 instead of 2.45, and the hour

[1] *See also* JOURNAL, Vols. I. 17, 42; III. 30; VI. 97; XI-XII. 83; XIII. 24; XVI. 104; XVII. 181; XVIII. 56; XIX. 33-35.

[2] All references are to S.O.s in 1951.—[D. A. M. P.]

of interruption of business was changed from 11 to 10 p.m. In other respects the Order was amended to confirm practices of the House that had grown up during the war; thus the authority given to the Government during the war to suspend *without notice* S.O. 1 and thereby extend the hours of sitting was now confirmed, as was the wartime modification of this rule by which the hour of interruption could be put back by a specified time. Furthermore, the ½-hour adjournment motion at the end of each day's sitting—which had been introduced in 1943 in compensation for the Government's taking of all private members' time—was now enshrined in S.O. 1.

S.O.s 2 (*Friday Sittings*), 7 (*Time for taking private business*), 8 (*Questions to members*), 9 (*Adjournment on definite matter of urgent public importance*) and 28 (*Counting*).—The change in the hours of sitting required consequential amendments to be made in other Standing Orders. S.O. 2 was amended in order to apply S.O. 1 to Friday sittings, while S.O. 28 was amended to provide on Fridays—as on other sitting days—an hour during which the House could not be counted.

S.O. 112 (*Earlier meeting of House in certain circumstances*).—A new Standing Order was enacted, and took the place of the previous Sessional Order, to enable the Speaker to convene an adjourned House earlier than expected if the public interest demanded it.

S.O. 8 (*Questions to members*).—The Order dealing with Questions to members was amended to secure that notice of questions to be answered orally should appear on the Order Paper 2 days (instead of 1) in advance; although in certain circumstances questions could follow a slightly accelerated programme. The Order also defined the position of questions handed in during a Recess.

S.O. 39 (*Notices of amendments, etc.*).—Another new Order permitted notice of amendments to Bills (but not notices of Motion) to be handed in during an adjournment—other than the normal week-end adjournment—of the House; while a further provision of this Order, allowing amendments to be put down before the Bill had had its Second Reading, was enacted but was repealed in 1950.

S.O.s 109 (*Presentation of command papers*), 110 (*Presentation of statutory instruments*), and 111 (*Notification in respect of certain statutory instruments*).—Other new Standing Orders regulated the laying before the House of command papers, statutory instruments and certain communications about such instruments.

S.O. 9 (*Adjournment on definite matter of urgent public importance*).—A move to save the time lost to the Government by motions for the adjournment on definite matters of urgent public importance, was made by amending the appropriate Order. Previously, a motion of this type—which, if accepted, took precedence over the business of the House from half-past seven onwards—had had the inconvenient effect of thereby cutting out the pre-arranged business for the evening; now the Standing Order was amended so

that the time spent on such an adjournment motion from 7 o'clock onwards should automatically be made good by adding an equivalent length of time at or after 10 for the business which was postponed at 7.

Legislation.—A number of changes were made to the Standing Orders so that the House should more easily be able to deal with the great amount of legislation that was expected in the immediate post-war period.

S.O. 41 (*Business Committee*).—Special attention was paid to the problems posed by Bills whose Committee or later stages were to proceed under a so-called "guillotine" Motion. A new Standing Order set up a Business Committee consisting of all the members of the Chairman's Panel together with 5 others nominated by Mr. Speaker, and instructed them to divide such Bills into parts and then say how much of the total allotted time should be spent on each part. An interesting extension of their duty—but one that has never yet been used—is that they may, if they so wish, do the same for other Bills which—although not governed by an allocation of time order—have had a specified time allotted to their Committee or Report stages by the general agreement of the House. In each case the report of the Business Committee to the House had to be agreed to or rejected without amendment or debate.

S.O. 64 (*Business Sub-Committee*).—A reflection of that Order—which dealt only with Bills taken on the Floor of the House—is seen in another new Standing Order, which sets up within every Standing Committee which is considering a "guillotine" Bill, a Business Sub-Committee which is appointed by the Speaker and consists of 7 members and the Chairman of the Committee. The Sub-Committee allots portions of the Bill to each day's sitting, or group of days' sittings, and here again their reports to the Committee have to be agreed to or disagreed to forthwith.

S.O. 45 (*Debate on clause standing part*).—An important change, one that placed a new power into the hands of the Chairman of a Committee on a Bill, was made by the new S.O. 45. Under this Order the Chairman, if he thinks that the principle of a clause has been sufficiently discussed during debates on amendments proposed to the clause, can put at once the question "That the Clause stand part of the Bill" without allowing any debate on it. This is potentially one of the most restrictive of the changes made in the House's procedure, but in the few years that have elapsed since its introduction it has been used only sparingly.

S.O. 10 (*Adjournment of House to facilitate business of Standing Committees*).—A number of changes were made in order to facilitate the passage of Bills through Standing Committees. Thus an Order which allows the House to adjourn so that Standing Committees might proceed with their business more expeditiously—an Order which had been first introduced in 1919 and had then been repealed

in 1933—was now, with some safeguards, re-enacted. In its new span of life, as in its old, it has never been used.

S.O. 58 (*Nomination of Standing Committees*).—The size of a Standing Committee was reduced; the nucleus, which had previously varied from 30 to 50 members, was now fixed at 20, while the number of added "specialists" (previously any number from 10 to 35) was now to be any number up to 30.

S.O. 57 (*Standing Committees—Constitution and Powers*).—At the same time the quorum of the Committee was lowered from 20 to 15, and the limitation on the number of Standing Committees—previously 5—was removed.

S.O. 63 (*Meetings of Standing Committees*).—A new Standing Order laid down instructions for the days and hours of meeting of a Standing Committee, while another Order (*S.O.* 65, *Attendance of law officers in Standing Committees*) enacted the former Sessional Order by which the law officers of the Crown, though not members of the Committee, were allowed to take part in the Committee's deliberations, although they could not vote or move any Motion or form part of the quorum.

Financial Business of the House.

The Standing Orders were amended in order to bring them into line with the changed nature of proceedings in Committee of Supply, which now no longer retain their former purely financial significance, but are largely given over to the consideration of Government policy and administration. The changes in the Orders enabled Supply days to be spread more evenly throughout the Session and to be used, on occasion, for debates that are less restricted than previously.

S.O. 16 (*Business of Supply*).—The number of days allotted to Supply had previously been 20, plus 4 days for moving Mr. Speaker out of the Chair on first going into Committee of Supply on the Navy, Army, Air and Civil Estimates, and any number of days necessary to consider and pass the Supplementary Estimates; the new Standing Orders fixed the total for all these at 26. Moreover, in order to ensure that the Government was voted its Supply, it was laid down that a new guillotine was to fall before March 31 on all Votes on Account, on the particular Service Votes chosen, on all outstanding Supplementary Estimates and—if countenanced by the Public Accounts Committee—on any Excess Vote. In order that these Votes should not go through without adequate discussion, the Standing Order laid down that this first guillotine—on the Committee resolutions authorising supply of the money—should not fall before the seventh allotted supply day; on the next such day, the Speaker had to put every question necessary for the House to agree to the Committee's resolutions. The similar guillotine which falls on the last but one and the last allotted day, remained unchanged.

S.O. 17 (*When Chair is to be left without question put*).—Another

amended Order widened the use of the Motion "That Mr. Speaker do now leave the Chair". This could now be moved—but only by the Government—whenever convenient, and by a novel amendment to the Standing Order, incidental reference to legislation—hitherto disallowed on Supply days—could be made.

S.O. 42 (*Committee of the Whole House on Bill*).—To point the difference between this and the normal procedure when the House goes into Committee on a Bill, it was decided to re-enact the Order—repealed in 1933—which specified that when the House goes into a Committee on a Bill the Speaker leaves the Chair without question put.

S.O. 16 (*Business of Supply*).—The Standing Orders were now amended in order to make specific reference for the first time to the Ministry of Defence Estimate, which was no longer to be included among the Civil Estimates nor amongst those of the Fighting Services.

S.O. 86 (*Ways and Means: Motions and Resolutions*).—A substantial change in the financial procedure of the House was made by a new Standing Order which had the effect of cutting out debate on one whole stage of the passage of the Ways and Means Budget Resolutions. The Order laid down—what was already largely the practice of the House—that once the first of these Resolutions had been moved, the questions on all of them except the last (which was left as a peg on which to hang the debate that would continue for several days) should successively be put forthwith; but it went on to direct that on the Report stage of all such Resolutions, the question "That this House doth agree with the Committee in the said Resolution" should be put at once without debate.

S.O. 84 (*Money Committees*).—A minor change in the House's financial procedure was made to allow money Resolutions, having been agreed to in Committee, to be reported to the House at once if such a proceeding had the general consent of the House.

The Scottish Standing Committee. *S.O.* 60 (*Public Bills relating exclusively to Scotland*) and *S.O.* 61 (*Special Procedure for Scottish Estimates*).—New Standing Orders, enacted in 1948, gave to the Scottish Standing Committee new responsibilities in the consideration of the principle of Scottish Bills (in lieu of Second Reading) and in the consideration of the Scottish Estimates. The effect of this "small experiment in devolution" is examined in an Article in Volume XVIII of this JOURNAL (p. 138).

Revision of Standing Orders.—The whole process of revising the Standing Orders of the House was completed in the summer of 1948, when a series of re-drafting amendments and re-arrangements, which had been originally suggested by the Clerk of the House and then recommended by a Select Committee on Standing Orders (Revision), were agreed to by the House.

IX. BRIEF HISTORY OF THE OFFICE OF THE SERJEANT-AT-ARMS, HOUSE OF COMMONS

By Major-General I. T. P. Hughes, C.B., C.B.E., D.S.O., M.C.,
Deputy Serjeant-at-Arms.

Serjeants-at-Arms were probably first introduced in the reign of Richard I as a personal bodyguard for the King. They were selected from "men of knightly rank originally 24 in number who were required to be in immediate attendance on the King's person to arrest traitors and other offenders".

During Richard II's minority the Speakers seem to have been non-political administrators, but in his later Parliaments when he began to assert his rule we find many were men who had had employments in the royal service. The demands made by the House of Commons, whose servant the Speaker was, and by the King who had appointed him, were often at variance and so led to violent conflict. This may well be the reason why Richard II, about 1391, appointed Robert Markless one of his Serjeants-at-Arms "at the time of every Parliament to attend upon the Speaker of the House of Commons".

The appointment was for life at a salary of 12*d*. a day—the fee of an ordinary Serjeant-at-Arms—and a yearly livery of clothing at Christmas. Nevertheless, though nominally no better paid than an ordinary serjeant, his post brought perquisites that made it a coveted promotion, and the salaries and gifts from the Crown were a minor part of the profits of office.

The election of the Speaker has long been the free choice of the House of Commons, though the selection still requires the Royal approval. The appointment of the Serjeant-at-Arms remains the gift of the King under a warrant from the Lord Chamberlain and by patent under the great seal. But on two occasions—Markless in 1391 and Nicholas Maudit in 1414—the appointments were made at the instance of the Commons, and during the Commonwealth the House itself appointed the Serjeant-at-Arms and apparently did so with each new session. In 1875, when the Lord Chamberlain proposed H. David Erskine for the post, Lord Beaconsfield announced that there was a great feeling in the House that Ralph Gosset, then Deputy Serjeant, ought to be appointed. To this Queen Victoria agreed on condition that Erskine be Deputy and succeed to the higher office when it became vacant.

Once appointed, the Serjeant-at-Arms may be removed for misconduct. On June 2, 1675, the House committed Sir James Northfolk to the Tower for failing to make four arrests ordered by the House. After Northfolk's removal Robert Reed served the office for a day, and then John Topham for a day.. Topham made all the

arrests and was promptly removed by Charles II. Topham escaped arrest by Black Rod (at the order of the Peers) by hiding in the Speaker's Chamber until Charles, sick of the privilege squabbles, dissolved Parliament. This, of course, also ended Northfolk's confinement in the Tower.

Sir William Bishop followed as Serjeant-at-Arms from October, 1675, to July, 1693. In October, 1678, probably due to his wife's illness, he nominated, on the recommendation of Speaker Seymour, John Topham his deputy. Topham remained acting Serjeant-at-Arms until his death in December, 1692.

Topham's period of service was marked by the extreme frequency, almost daily, of commitments by the House. As the executive officer his name became well known, indeed notorious, so that "to take a man Topham" was proverbial for a peremptory arrest.

At the beginning of the eighteenth century the office of Deputy Serjeant-at-Arms was created, and in 1836 that of Assistant Serjeant-at Arms; Sir William Gosset, who was then Serjeant-at-Arms, appointing his son, Ralph Gosset, who became Serjeant-at-Arms nearly 40 years later.

The earliest functions of the Serjeant-at-Arms were the maintenance of law and order together with the execution of warrants. With his attendance on the Speaker he naturally was involved also in all ceremonial functions connected with the Speakership. More domestically he was charged with the cleaning of the Commons House and keeping the doors. Other duties have been added from time to time.

In 1812, by a statute of George III, he became "Housekeeper of the House of Commons", and under warrant from the Lord Great Chamberlain he occupies such portions of the Palace of Westminster as are prepared for the use of the House of Commons.

This, however, gives little indication of his multifarious duties and responsibilities connected with the administraton of the House. He controls the Police and has a staff comprising 31 Doorkeepers, 44 Superintendents and Attendants, together with 24 women cleaners.

The Mace[1] is received by the Serjeant-at-Arms from the Lord Chamberlain of the Household; it is, therefore, in the first place a symbol of the Royal authority, and thence derivatively of the authority of the Speaker and the House. When the House is dissolved or prorogued it reverts to the custody of the Lord Chamberlain of the House-hold, but during an adjournment it remains in the control of the Serjeant-at-Arms.

[1] *See also* JOURNAL, Vol. XVIII. 57.

X. ISLE OF MAN: CONSTITUTIONAL MOVEMENTS, 1944-51[1]

By The Editor

Since the Article on the Constitution of the Isle of Man, so generously contributed by the Speaker of the House of Keys (the Hon. J. D. Qualtrough, C.B.E.), to Volume XI-XII, there have been constitutional movements from time to time, but principally on account of the pressure of other matters somewhat restricting space in the JOURNAL, it has not been possible to keep the information up to date.

The only reference to the Isle in the JOURNAL since 1944 has been in the "Busman's Holiday" Article in Volume XVIII, the object of which was to give an impression of the ancient gathering on Tynwald Hill.

It is therefore now proposed to make reference to the various Reports of Committees of Tynwald and the House of Keys, Memoranda and other White Papers of the Island issued since 1944 having a special bearing on the Legislature.

Reports, etc.

The following references to the various Reports, etc., are given, together with the date of each, so that those desiring more deeply to go into the subject may have a guide. The Roman figure in front of each title is one given by us for the purpose of this Article.

I. *Report* (September 16, 1943) of the Committee of the House of Keys appointed to consider the whole question of the Constitution of the Isle of Man and the manner in which it is functioning and to report to the House as to what reforms in the Constitution are desirable.

II. *Report* (December 14, 1943) of the Committee appointed to prepare a Petition to His Majesty's Principal Secretary of State for Home Affairs embodying matters contained in the Report dated September 16, 1943, of the Committee, appointed by the House to consider the whole question of the Constitution of the Isle of Man (with appendix containing the draft Petition to the Home Secretary).

III. *Report* (May 23, 1944) of the Committee of Tynwald on Manx Constitutional Development together with Memorandum of Tynwald on the matter of Constitutional Development recommended by the Committee for adoption.

IV. *Memorandum* (October 10, 1944) prepared by the Attorney-General on the constitutional position of the Isle of Man with relation to the Imperial Government.

V. *Letter* (February 20, 1946) from the Permanent Under-Secretary of State, Home Office, communicating the observations of the Secretary of State on the Report of the Committee of Tynwald on Manx Constitutional Development.

Resolution.

As in the case of the Channel Islands' Committees,[2] Boards are an important feature both of Departmental and Local Government.

A Resolution was passed by Tynwald on April 9, 1946, approving of the proposals of the Secretary of State contained in a letter

[1] *See also* JOURNAL, Vols. VII. 43; XI-XII. 137; XVIII. 278-287.

[2] *See* JOURNAL, Vol. XIX. 344-7, 362.

from the Home Office of February 20, 1946; requesting the Lieutenant-Governor of the Island to introduce legislation to reconstruct and amend the Constitution, powers, and duties of certain Boards dealing with Forestry, Fisheries, Agriculture, Local Government and Social Services.

The Boards of Agriculture and Fisheries, Health and Social Services consist of 7 members of Tynwald, one of whom must be an elected or appointed M.L.C., and 6 M.H.K.s, unless Tynwald shall, at the time, otherwise resolve.

Names of certain Boards have been changed, and Highway and Transport and the Harbour Boards are each to consist of 5 members of Tynwald, one of whom must be an elected or appointed M.L.C., and 4 M.H.K.s, unless Tynwald shall, at the time of their election, otherwise resolve.

An elected or appointed M.L.C. or M.H.K. is not eligible for election to more than 2 of the above-mentioned Boards, and Board members hold office for 5 years and are eligible for re-election. The Chairman of each Board is elected by Tynwald after prior consultation with the Lieutenant-Governor and representatives of the Legislative Council and House of Keys. Each Board may appoint a Deputy Chairman and delegate part of its duties to sub-committees of members of the Board. The Chairman, or in his absence, his Deputy, has both a vote and a casting vote.

Provision is made for reciprocity between officers of the Manx and the United Kingdom Public Services, but no decision was taken as to the recognition of the Staffs of all Boards as Civil Servants.

It was also resolved that in order to remove all doubts concerning the composition of the Lieutenant-Governor's Executive Council, that he be respectively requested to constitute all M.L.C.s as his Executive Council.

The Isle of Man Constitution Act, 1946.—This Act provides for the retirement of elected M.L.C.s as well as for their continuance in office until their successors are appointed, and the House of Keys, as provided by the Isle of Man Constitution Acts, 1919 to 1936, at a meeting of such House to be held within one month after the newly-elected House of Keys has assembled, elects 2 M.L.C.s until November 1, 1950, and also 2 persons to serve until November 1, 1954. For the purposes of the said Acts, 1919 to 1936, such periods of office are deemed to be 4 and 8 years respectively, and subject thereto, the elected M.L.C.s will continue to retire from, and be elected to, office in accordance with the above-mentioned Acts.

Approval of the above Act was given by Order-in-Council dated June 26, 1946.

The Payment of Members' Expenses Act, 1946.—This Act, following a Report (dated December 12, 1945) of a Committee of Tynwald provides for the payment by the Treasury of the Island out of

General Revenue of the allowances, expenses and disbursements (which are exempt from income tax) of M.L.C.s and M.H.K.s; the Speaker and the Chairmen of certain Boards with defined powers vested in the Lieutenant-Governor and Tynwald.

Office of Profit under the Crown.—The above payments may not be made to the holder of any salaried office under the Crown.

This Act was approved by Order-in-Council dated September 24, 1946.

Reports (*continued*).

VI. On May 29, 1949, was issued the Report of a deputation appointed by Tynwald on the 3rd *idem* to interview representatives of the Imperial Government on Financial Relations between the Isle of Man and the Imperial Government.

VII.—A further *Report* (May 29, 1949) of the Committee appointed by Tynwald on May 3, 1949, was issued, containing further reference to the above subject.

Resolution of Tynwald.—The Resolution of Tynwald, dated November 15, adopts the Report of the Deputation appointed by Tynwald on May 3, 1949, to interview representatives of the Imperial Government on financial relations between the Isle of Man and the Imperial Government, dated May 29, 1949, subject to certain modifications in regard to the powers of Tynwald in connection with finance.

Reports (*continued*).

VIII.—*Report* (June 26, 1951) and recommendations of the Consultative and Finance Committee of the House of Keys, with reference to the Resolution of such House of January 23, 1951, *Re:* Constitutional Position.

IX.—*Report* (September 15, 1951) of the Committee appointed by Tynwald on May 3, referred to Financial Relations between the Isle of Man and the Imperial Government.

Representation of the People Act, 1951 (14 & 15 Geo. VI).—This Act was passed on May 15, received *R.A.* June 29 and was announced to Tynwald July 10, all in 1951. Its long title is:

An Act to consolidate and revise the law relating to House of Keys and Isle of Man Education Authority elections,

with the usual Isle of Man enactment as follows:

WE, Your Majesty's most dutiful and loyal subjects, the Lieutenant-Governor, Council, Deemsters and Keys of the said Isle, do humbly beseech Your Majesty that it may be enacted, and be it enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lieutenant-Governor, Council, Deemsters and Keys, in Tynwald assembled, and by the authority of the same, as follows (that is to say):

For the purpose of a dual election to the House of Keys and the Isle of Man Education Authority, the Island is divided into 11 con-

stituencies, including the 6 "sheadings", etc., which show the number of members returned to the House of Keys and the Isle of Man Education Authority respectively.

Franchise.—This is enjoyed by every adult British subject, or citizen of Eire not subject to any legal incapacity to vote, who is the owner, or occupier, of real estate within the constituency in which he is registered, of the gross value of not less than £4, provided his abode for 12 months ended May 12 has been in the Isle.

Qualifications for membership of the House of Keys.—To be eligible to stand as a candidate for and be elected as M.H.K. a person must be an adult British subject other than: (1) a person who, being in Holy Orders, is beneficed or licensed to officiate as a clergyman; or (2) a person holding any office of profit under the Imperial or Manx Government; or (3) a person who is under any legal disability.

But, Office of Profit does not include acceptance of payments made by the Treasurer of the Island under the Payment of Members' Expenses Act, 1946 (*see above*); or, as a member of any Board as defined by the Superannuation (Officers of Boards) Acts, 1934-35, solely as allowances in respect of expenses and disbursements received in performance of his duties; or is during a National Emergency a member of H.M. Forces.[1]

The House of Keys may by Resolution declare the seat of a member vacant who is certified as of unsound mind or is absent from the Island for 12 months.

Should an M.H.K. sit or vote when disqualified he is liable to a fine of not exceeding £50 for each day upon which he shall so sit or vote.[2]

Writs are issued by the Governor, and upon a vacancy taking place in the House of Keys, the Speaker reports in writing to the Governor within 7 days thereof.[3]

A returning officer may be elected to the House of Keys except for the constituency for which he acts as such returning officer.[4]

Similar provisions to the above are made in regard to the Board of Education.

Duration of House of Keys.—Every House of Keys, unless sooner dissolved by the Governor, continues for 5 years from the day on which the writ for general election thereof was issued, and when the term of any House of Keys expires by the effluxion of time between May 31 and September 30, such term is extended to the said September 30.[5]

Prorogation and Dissolution.—S. 143 provides:

143. The Governor may, from time to time, whenever he shall deem expedient—

[1] Ss. 52, 53. [2] Ss. 55, 56. [3] Ss. 57, 58. [4] S. 65.
[5] Ss. 142, 143.

(1) by precept under his hand—

(*a*) summon the House of Keys when not in Session, or when the said House stands adjourned or prorogued though adjourned or prorogued to a more distant date or for a longer period;

(*b*) prorogue the House of Keys; or

(2) by proclamation dissolve the said House and issue fresh writs for a general election of members to serve therein.

Oath.—No member may sit and vote until he has taken the Oath of Allegiance.[1]

Extension of term of Keys in times of Special Emergency.—The sections of Part VI are as follows:

150. (1) During any period of national emergency the Governor may, by order—

(*a*) extend the term of the Keys or Authority, or the term of office of any member of the Legislative Council elected by the Keys, by a period of one year from the date when otherwise the term of the Keys or Authority would expire, or the member cease to hold office; and

(*b*) declare that the register of electors in force at the time of the making of such order shall remain in force for a period of one year after the date when such register would otherwise cease to be in force.

(2) On any Order being made under the preceding subsection any casual vacancy occurring in the Authority during such extended term shall be filled by means of the choice by the Authority of a person to fill such vacancy, and a person so chosen shall hold his seat in the same manner in all respects as if he had been elected thereto.

(3) On any such Order being made, the provisions of this and any other Act or any regulations relating to members of the Keys or the Authority, or to elected members of the Legislative Council, shall be construed as if they were modified in such a manner as to give effect to this section, and the Governor may by the said Order, or by subsequent Order, make such provisions as are necessary to effect such modification.

151. The powers by the foregoing provisions of this Part of this Act conferred upon the Governor, if the same are exercised by him, may (with the approval of a resolution of Tynwald) be again exercised with respect to any subsequent year or years after the expiration of the period of one year therein referred to, and thereupon the provisions of this Part of this Act shall apply to such further year or years.

152. If any question arises as to any matter under this part of this Act, or the operation thereof, such question shall stand referred to the Deemsters who shall determine the same summarily after hearing any parties they consider ought to be heard.

Speaker.—S. 145 provides:

145. The members of the House of Keys shall, from time to time, upon their first assembling after every general election, forthwith proceed to elect one of their number to be Speaker, and, in the case of his death, resignation, or removal by a vote of the said House of Keys, forthwith proceed to elect another of such members to be Speaker: Provided always, that the office of Speaker shall not be vacated, save as aforesaid, except by the dissolution of the said House of Keys.

[1] S. 144.

Powers and Privileges of Keys.—S. 146 provides:

146. Nothing in this Act contained shall affect, or in any manner be construed to affect, the inherent powers heretobefore exercised by the House of Keys as a legislative body; and after the promulgation hereof the House of Keys, and the several members thereof, as directed by this Act, shall, from time to time, and at all times, have, exercise, and perform the same power, authority and duties, and be subject to the like obligation (save and except where the same are expressly altered by this Act) and be entitled to and enjoy the same rights and privileges, in as full and ample manner as the House of Keys, and the several members thereof for the time being, and members elected to be members thereof heretofore had, exercised and performed, and was, or were, entitled to and enjoyed.

The Act comes into force when *R.A.* thereto has been announced by the Governor to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys.[1]

XI. AUSTRALIAN GENERAL ELECTIONS, 1951

By A. A. Tregear, B.Com., A.I.C.A.,
Clerk-Assistant of the House of Representatives.

Following the dissolution of both Houses of the Commonwealth Parliament,[2] the people of Australia had the opportunity of electing Senators and Members of the House of Representatives for the second time within 2 years.

The election was held on April 28, 1951, and resulted in the return of the Liberal and Country Party Government under the leadership of the Rt. Hon. R. G. Menzies with a majority in both Houses.

In the House of Representatives, the changes in party strength were not great. Prior to the poll, parties were represented as follows:—Liberal and Country Party 74, Labour Party 47, excluding the members for the Australian Capital Territory and the Northern Territory.

Labour increased its numbers of full voting members to 52, the Liberals losing 3 seats and the Country Party 2.

The distribution of parties throughout the States now stands as:—

	Liberal.	*Country.*	*Labour.*	*Total.*
New South Wales	16	7	24	47
Victoria	15	3	15	33
Queensland ...	9	5	4	18
South Australia ...	5	—	5	10
Western Australia	3	2	3	8
Tasmania ...	4	—	1	5
Australian Capital Territory[3] ...	—	—	1	1

[1] S. 158. [2] Commonwealth of Australia Constitution Act, s. 57.—[A. A. T.]
[3] These Members have restricted voting powers.—[A. A. T.]

	Liberal.	*Country.*	*Labour.*	*Total.*
Northern Territory[1]	—	—	1	1
	52	17	54	123

It was in the Senate where the change of major consequence occurred, as the Labour Opposition majority was converted into a minority. Of the 60 Senators who faced the electors, 34 belonged to the Opposition Party and 26 to the Government. The figures after the poll were Government 32, Opposition 28, the State representation being: —

	Government.	*Opposition.*
New South Wales ...	5	5
Victoria	5	5
Queensland	6	4
South Australia	5	5
Western Australia ...	6	4
Tasmania	5	5
	32	28

Each State returns 10 Senators and the effects of voting by P.R., which applies to the Senate elections, are shown by the balance of the party representation in each State.

An interesting feature of the Senate result is the application of the system of rotation for retirement fixed by s. 13 of the Constitution. For the purpose of this section, Senators chosen for each State are divided into 2 classes, half having a three-year term and half a six-year term. When the election follows a dissolution, however, the term of service commences from the 1st July preceding the election. Therefore, those Senators serving the shorter term will cease to be Senators on June 30, 1953, a little over 2 years after their election.

In dividing Senators into the 2 classes, the Senate followed previous practice and the first 5 at the poll in each State were given the longer term of service.

The duration of the House of Representatives is fixed at 3 years, but it may be dissolved sooner by the Governor-General.[2] It will be interesting to see whether the House will run its full term or face the electors at the same time as the short-term Senators.

[1] These Members have restricted voting powers.—[A. A. T.]
[2] Constitution, s. 28.

XII. AUSTRALIAN BANKING LEGISLATION AND THE DOUBLE DISSOLUTION

By John Edwards, J.P., and F. C. Green, M.C.,
Respectively Clerk of the Senate and Clerk of the House of Representatives of the Commonwealth of Australia.

One of the most important political issues ever to come before the Parliament of the Commonwealth of Australia was the Labour Government's Banking Bill, 1947, the purpose of which was to empower the Commonwealth Bank to take over the banking business conducted in Australia by private banks.

The Bill was brought down in the House of Representatives on October 15, 1947, by the then Prime Minister (Rt. Hon. J. B. Chifley).

The Banking Bill was strongly opposed by the Opposition, led by the Rt. Hon. R. G. Menzies, who declared that the legislation would destroy the existing system of trading banking and that it would create in the hands of the ruling political party a financial monopoly, able to exercise dictatorial controls over all production and business. Opposition members presented many petitions from electors praying that no further steps be taken by the Government towards nationalization of the banking system without first seeking the authority of the Australian people.

The Banking Bill passed the House of Representatives on November 19, 1947, and was agreed to by the Senate the same month.

However, the Banking Act, 1947, was fated never to be put into operation. The High Court of Australia, and later the Privy Council, declared that the Act was invalid in certain respects.

At the General Elections, 1949, the Labour Government was defeated, and the Menzies-Fadden ministry took office. One of the first acts of the new Government was to introduce the Commonwealth Bank Bill, 1950, which proposed (*a*) the repeal of the Banking Act, 1947, and (*b*) the setting up of a Board of 10, instead of a Governor, to control the Commonwealth Bank.

Labour, however, retained a majority in the Senate. While bank nationalization was no longer a live issue because of the decisions of the Courts, the Labour Party had very strong objection to the reconstitution of the Commonwealth Bank Board which, they claimed, implied representation thereon by private banking interests.

At the time there were few who thought this issue vital enough to precipitate a dissolution of the 2 Houses, but events took their constitutional course and the Parliament was dissolved (on March 19, 1951) for the second time since Federation in 1901. In the Proclamation dissolving both Houses, the Governor-General determined that the Senate had "failed to pass" the Commonwealth Bank Bill after it had, on the first occasion, been unacceptably amended.

The words "failed to pass" are not defined in the Australian Constitution. The double dissolution was granted following the Senate's reference of the Commonwealth Bank Bill to a select committee, which was apparently interpreted by the Governor-General, on the advice of the Prime Minister, as "failure to pass".

The double dissolution took place on March 19, 1951, and so far, as the advice tendered to the Governor-General, and His Excellency's reasons for accepting the advice, have not been communicated to Parliament. The Prime Minister has informed the House that it was not intended to do so during the term of the present occupant of the office of Governor-General. When the documents are eventually tabled and published they will undoubtedly be of great interest to all constitutional authorities throughout the British Commonwealth.

At the General Elections following the double dissolution, the Menzies-Fadden Government was returned to office with a majority in both Houses. A Commonwealth Bank Bill, in exactly the same terms as the 2 Bills which furnished the grounds for the double dissolution, was soon introduced and passed by both Houses.

XIII. BRITISH HOUSE OF COMMONS PRESENTS SPEAKER'S CHAIR TO NEW ZEALAND HOUSE OF REPRESENTATIVES

By H. N. Dollimore, LL.B.,
Clerk of the House of Representatives.

By direction of His Majesty and on behalf of the House of Commons of the United Kingdom of Great Britain and Northern Ireland I have the honour formally to present this chair to the House of Representatives of New Zealand.

Having said these words the Rt. Hon. R. K. Law, the Leader of a Delegation from the British House of Commons, standing beside the Table on the floor of the Chamber of the New Zealand House of Representatives, unveiled a Speaker's Chair.

With the following motion moved by the Prime Minister (Rt. Hon. S. G. Holland), and seconded by the Leader of the Opposition (Rt. Hon. W. Nash), the New Zealand Parliament unanimously accepted the gift: —

That this House accepts with thanks and appreciation the gift of the Speaker's Chair from the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland to mark the completion by New Zealand of a century of full parliamentary government, and as a token of friendship and goodwill on the part of the British House of Commons and people towards the House of Representatives and people of New Zealand.

The ceremony connected with this presentation was of great his-

torical interest and made a deep impression on the full House and crowded galleries which witnessed it.

Shortly before the opening of the House on Tuesday, November 20, 1951, a tall, handsome Chair fashioned from the finest English oak and upholstered in green hide, and bearing the New Zealand coat-of-arms in gold at its head, was placed in position in the Lobby adjacent to the southern door of the Chamber. On the ringing of the bells at 2.25 p.m. the members of the Delegation, consisting of the Rt. Hon. R. K. Law (Leader), the Rt. Hon. D. R. Grenfell, and Mr. J. Grimond, accompanied by Mr. T. G. B. Cocks, a Senior Clerk of the House of Commons, took up their positions beside the Chair. Punctually at 2.30 p.m. the Speaker (Hon. H. M. Oram) preceded by the Serjeant-at-Arms, made his ceremonial entry to the Chamber from the northern end. The Prayer having been read and the Mace placed upon the Table, the Serjeant-at-Arms proceeded, not to his accustomed place, but to the Bar of the House. Having removed the Bar and opened the southern doors he turned about and advancing beyond the Bar into the Chamber he addressed Mr. Speaker as follows: —

Mr. Speaker, I have to report that a delegation sent by the Commons House of the Parliament of the United Kingdom of Great Britain and Northern Ireland, to present a Speaker's chair to the New Zealand House of Representatives, is inquiring if this honourable House will be pleased to receive them.

Mr. Speaker.—Is it the wish of the House that the delegation be received?

Hon. Members.—Aye, aye!

Mr. Speaker.—Yes, admit them, please.

The Serjeant-at-Arms having removed the Bar, the Chair, suitably covered, was carried into the Chamber by Messengers and placed in position below the Table of the House. The delegation then entered the Chamber preceded by the Serjeant-at-Arms. On reaching the cross benches the Serjeant-at-Arms halted and made the following announcement: —

Mr. Speaker, the delegation from the House of Commons,

whereupon all members rose in their places. The members of the delegation then moved forward, and standing in front of their seats beside the Chair, bowed to Mr. Speaker.

Mr. Speaker: I welcome you, Gentlemen, on behalf of this House. Pray be seated.

Members of the House and members of the delegation being seated, Mr. Speaker addressed the delegation as follows: —

I am very proud, as Speaker, to extend to you the warmest possible welcome on behalf of the members of this House, and indeed of the people of New Zealand, to this our Parliament. To-day is truly an historic occasion, marking as it does the first time that such a delegation has visited our shores. We are deeply honoured that your Parliament should see fit to send you, and that you, representing as you do the three political parties and the officials of the House of Commons should, at no small inconvenience to yourselves, come so far—and I might even say so fast—on such a momentous, generous, and sig-

nificant visit to this most distant, but, at the same time, the most British and the most loyal portion of his Majesty's Empire. Recently we had the privilege of participating with you in the joy you experienced in the rebuilding of your House of Commons. Your visible home, it is true, had been destroyed by enemy action, but your spiritual home is forever indestructible, resting as it does securely in the hearts of the people, and in your institutions which have guaranteed to all of us who have come under their influence, liberty, freedom, and justice, and which, working always for the good of the human race and the welfare of the world, will always make Great Britain, its Empire, and its Commonwealth, a powerful factor and a guiding force in the future of mankind.

Like a wise parent your Parliament has seen to it that its children, when they have reached the required degree of maturity, have assumed for themselves full responsibility for their Governments, their development, their future, and their destiny; and so you will find here the same fundamental principles, the same form and procedure, varied only to suit our local conditions, the same traditions, and the same high ideals that have been won over the years by long struggle, firm resolve, and unswerving tenacity of purpose in your own Palace of Westminster, and which comprises at once one of the Britisher's most cherished possessions and our richest inheritance.

The Rt. Hon. R. K. Law, of the House of Commons, in the course of his response to this welcome, said:—

Mr. Speaker and members of the House of Representatives: it is our duty and our privilege here to-day to convey to you, Sir, and to this House of Representatives, the greetings of the House of Commons at Westminster, and to thank you, not only for the eloquent and just remarks which you have addressed to us, but also for the cordial welcome that you have given us as ambassadors of that House. We have not come here to-day as representatives of His Majesty's Government in the United Kingdom; nor are we here as representatives of political parties, but as representatives of the House of Commons as a whole and accompanied by Mr. T. G. B. Cocks, a high official of that House.

Four months ago the House of Commons prayed the King, that His Majesty would give direction that a Speaker's Chair be presented on behalf of the House of Commons to the House of Representatives in New Zealand, in order to mark the centenary of the development of parliamentary institutions here, and His Majesty was graciously pleased to heed our prayer.

The Commonwealth and Empire did much to beautify our new House of Commons, at the opening of which, as you reminded us, Mr. Speaker, you assisted us a little over a year ago. And over the long future, whenever a Minister or Leader of the Opposition speaks in our House, he will stand at one or other of the dispatch boxes which are silent yet eloquent witness of the interest which New Zealand has always taken in the Old Country. It is partly in return for this generous gift that the House of Commons has sent to New Zealand the Speaker's Chair which we, your guests, will shortly have the honour formally to present to the House of Representatives.

This response was supported in speeches by the Rt. Hon. D. R. Grenfell and Mr. J. Grimond, the other members of the Delegation.

Following the unveiling and formal presentation the Prime Minister, in moving the Motion of thanks, said:—

I move that motion with very great pleasure. This is a very unique occasion. It is the first time in my experience that I have seen strangers on the floor of Parliament, but no people could be more welcome on this floor than these 4 honoured guests are to-day. This is an occasion when the bonds of

Empire are being strengthened. We in New Zealand have always had and always will have, I believe, the warmest regard and affection for the people of Britain and those who represent them when they come here, and I would ask the delegation, all of them, to convey to their friends in the Palace of Westminster the warmest regards and kindly good wishes of all my colleagues of the Parliament of New Zealand. We here are proud of our British background and proud to be able to call ourselves British and associate ourselves with those from whom we have sprung. I would be glad, on behalf of all those present here to-day, to invite the delegation to give to our friends in Great Britain the warmest regards and assurances of our enduring friendship. We in Parliament assembled this afternoon accept proudly and humbly this handsome gift which will at all times be treasured and will remain a symbol of our friendship and of our unity.

The Prime Minister was warmly supported by the Leader of the Opposition, who seconded the Motion.

The Motion being carried, the members of the Delegation and the members of the House rose in their places. The members of the Delegation, bowing first to the Government benches on their left and then to the Opposition benches on their right, withdrew from the Chamber, preceded by the Serjeant-at-Arms. On reaching the Bar they turned about and made a final bow to Mr. Speaker.

A short adjournment was then taken to enable the Chair to be placed on the dais, and when the House resumed the members of the Delegation, seating themselves on Mr. Speaker's left, remained to witness the proceedings of the House, which included the introduction of Bills, the asking of Questions and the consideration of departmental Estimates in Committee of Supply.

In the House of Commons on February 4, 1952,[1] Mr. Richard Law referred to leave of absence having been given himself and the other members of the Delegation appointed to present, on behalf of the House of Commons, a Speaker's Chair to the House of Representatives of New Zealand, and to Mr. Speaker having made available to the Delegation the services of a Senior Official of the House —Mr. T. G. B. Cocks, O.B.E.—to accompany them.

Mr. Law also reported that the Delegation had fulfilled the Mission entrusted to them, as outlined above, and also reported the abovementioned Resolution passed by the New Zealand House of Representatives. The rt. hon. Gentleman then referred to the great hospitality which had ben extended to the Delegation and to the common bond which united the 2 countries.

Mr. Speaker then said that he would give direction that the Resolution referred to by the rt. hon. the member for Kingston-upon-Hull (Mr. Law) be entered on the Journals of the House.

[1] 495 *Com. Hans.* 5, s. No. 32, 648.

XIV. REPORT OF ROYAL COMMISSION UPON PARLIAMENTARY SALARIES[1] AND ALLOWANCES IN NEW ZEALAND[2]

By E. A. Roussell, LL.B.,
Clerk-Assistant of the House of Representatives.

Section 27 of the Civil List Act, 1950, provides that the Governor-General, on the recommendation of a Royal Commission appointed in that behalf, may from time to time, by Order in Council fix the salaries and allowances to be paid to the Prime Minister and other Ministers of the Crown or members of the Executive Council, to Parliamentary Under Secretaries, and to the Speaker and Chairman of Committees, and other members of the House of Representatives.

A Royal Commission to make recommendations as to the above-mentioned salaries and allowances was appointed on February 14, 1951. The Commission comprised the following members: Sir Arthur Donnelly, Barrister and Solicitor; Mr. J. H. Boyes, ex-Public Service Commissioner; the Hon. W. E. Barnard, Barrister and Solicitor, and ex-Speaker of the House of Representatives.

It is interesting to note that this is probably the first occasion on which private citizens in any country of the Commonwealth have been given the task of recommending what salaries should be paid to their parliamentary representatives.

The Commission met on a number of occasions and submitted its Report to Parliament on September 28. (*Vide* Parliamentary Paper, 1951, H-25.)

A summary of its recommendations is as follows:

SUMMARY OF RECOMMENDATIONS

Executive.	£
Prime Minister—	
Salary	3,000
Expense allowance	1,000
Ministers[3]—	
Salary	2,000
Expense allowance	450

Note.—Where the ministerial office of Minister of External Affairs is held by a Minister other than the Prime Minister an additional expense allowance of £150 to be paid.

Ministers without Portfolio—	
Salary	1,650
Expense allowance	400
Parliamentary Under-Secretaries[4]—	
Salary	1,250
Expense allowance	350

[1] *See also* JOURNAL, Vol. XIV. 63.
[2] Published by the Government Printer, Wellington.
[3] *See also* JOURNAL, Vol. V. 78.
[4] *Ib.* Vol. V. 33.

Officers of the House.	£
Mr. Speaker—	
Salary	1,600
Expense allowance	500

Note.—Residential quarters and certain services are provided in Parliament House for Mr. Speaker.

Chairman of Committees—	
Salary	1,300
Expense allowance	350

Note.—Sessional sleeping-quarters are provided in Parliament House for the Chairman.

Leader of the Opposition.	
Salary	1,600
Expense allowance	400
Allowance for travel outside electorate arising from his official position	150
Clerical assistance: a Secretary and a typist (each on a full-time basis) to be provided by the State on the nomination of the Leader	
Official stamp allowance to be increased to £10 per month	
Members.[1]	
Salary	900
Expense allowance—£250-£550 according to classification of electorate	

Notes:	*Per annum.* £
1. A basic expense allowance payable to all members of	250
2. A sessional accommodation allowance payable to all members other than those representing Onslow, Hutt, Petone, and the six electorates in or around the Wellington City area of	150
3. A special additional allowance payable to members representing "B" class electorates to meet additional travel costs of	75
or a special additional allowance payable to members representing "C" class electorates to meet the extra travel costs involved of	150

The classification of electorates to be made by the Representation Commission, which has a detailed knowledge as to area, population, topographical features, etc.

Official Stamp Allowance.—The official stamp allowance authorized by S. 151 of the Public Revenues Act, 1926 (as amended by S. 14 of the Finance Act, 1940) to be increased in the case of all members, other than the Leader of the Opposition, from £3 to £4 p.m.

The recommendations of the Royal Commission were unanimously adopted by the House of Representatives, and the necessary Order in Council was passed to give effect to the increased salaries and allowances as from September 1, 1951.

[1] *Ib.* Vols. I. 104; XIV. 63.

XV. THE CONSTITUTIONAL CRISIS IN SOUTH AFRICA

By Denis Victor Cowen, B.A., LL.B.,

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I have been asked to outline the historical background of the constitutional crisis in the Union of South Africa, and to summarize the events of the year 1951 in connection therewith. This will serve as an introduction necessary for the elucidation of major developments in 1952.

Historical Background.

In October, 1908, a National Convention of delegates from the Parliaments of four self-governing colonies, the Cape of Good Hope, Natal, the Transvaal and the Orange Free State, met "to consider and report on the most desirable form of South African Union and to prepare a Draft Constitution".[1]

One of the most difficult problems which faced the Convention was that of the franchise, especially in regard to non-European representation.[2] The Constitution Ordinance of 1852-3, which established representative government in the Colony of the Cape of Good Hope, prescribed economic and literacy qualifications for the franchise and for membership of the legislature, but made no distinction of race or colour.[3] When the Convention met, therefore, the Cape Colony had experienced fifty-five years of the operation and effects of a "colour-blind" franchise; and despite occasional criticism,[4] there had developed a strong "Cape tradition" which held that a democratic parliamentary system of government should not recognize distinctions of race or colour with regard to political rights.[5]

[1] *South African National Convention: Minutes of Proceedings*, p. 1. Representatives of the territory of Southern Rhodesia were also present, but though they were given the right to speak they had no vote.

[2] As used in South Africa, the term European designates a white person or one accepted as such. The non-European community includes Africans (*i.e.*, the Bantu-speaking peoples, who are often referred to as natives, especially in official documents), Asians (mainly Indians), and persons of mixed blood. The latter are called "coloured", and include the descendants of Malay slaves, Hottentots, and the offspring of unions between Europeans and the other groups. The bulk of them live in the Western Cape. For legal purposes, Hottentots are generally classed as natives and not as coloured people. See generally, the *Report of the Commission of Inquiry regarding the Cape Coloured People*, U.G. 54 of 1937. It should be noted, however, that there is as yet no standard terminology for the description of the various racial groups in South Africa. Current usage is fluid.

[3] *See* Ordinance No. 29 of 1852, sections 8 and 33; reprinted in Eybers, *Select Constitutional Documents illustrating South African History*, p. 45.

[4] *See, e.g.*, Sir Edgar Walton's *The Inner History of the National Convention*, Maskew Miller, 1912, pp. 124, 129, 140-1; and Lord Brand's *The Union of South Africa*, Oxford, 1909, pp. 105-6.

[5] The policy of non-differentiation on the ground of race or colour is associated with the names of a long list of distinguished men in the public life of the old Colony. As pointed out by Sir James Rose-Innes, himself a champion of the Cape Franchise and one of South Africa's most eminent Chief Justices, it was the policy "not only of Saul Solomon and Porter, of Sprigg and Rhodes, but also of Molteno and Scanlan, of Hofmeyr, Merriman, Sauer and Schreiner, a roll of names which includes representatives of many schools of South African political thought". *The Native Franchise Question, Cape Times*, 1929, p. 5.

Meanwhile, in the two Boer Republics of the North, the Transvaal and the Orange Free State, a thoroughgoing political colour bar had been established. Its essential character is best described in the language of article 9 of the Grondwet (Constitution) of the South African (Transvaal) Republic, 1858, which declares that " the people will not permit equality between coloured persons and the white inhabitants, either in Church or State ".[1] Similarly, the Orange Free State Republican Constitution of 1854 specifically confined political rights to white persons.[2] And these policies were continued in the North when, after the Anglo-Boer War of 1899-1902, the Republics became self-governing British colonies. Natal conceded the franchise in theory to non-Europeans, but subject to conditions which in practice virtually nullified the privilege.[3]

Very early in the deliberations of the National Convention, the problem of devising a uniform franchise revealed the deep cleavage between the traditions of the Cape and the North in regard to the political rights of the non-European community. Any attempt to impose either the Northern or the Cape tradition upon South Africa as a whole would have wrecked the prospects of closer Union. In the circumstances, the delegates agreed to defer the question of a uniform franchise for future consideration by the Union Parliament, and to effect a compromise in the meanwhile on the basis of maintaining the pre-Union *status quo*.[4] A vital feature of the compromise was that care should be taken to ensure that the Cape franchise would be suitably " entrenched ".

Then came the problem *how* to safeguard the rights involved and make the compromise effective. Earlier in the proceedings it had been decided to associate on a unitary rather than a federal basis, and to vest full legislative powers in a central Parliament consisting of the Queen (or her representative), a Senate and a House of Assembly.[5] Moreover, it was also envisaged that, in principle, the constitution should be a flexible one.[6] The question immediately

[1] Eybers, *op. cit.*, p. 364. It should be noted that although article 9 speaks of coloured, *gekleurden*, the non-Europeans in the Transvaal were, and still are, predominantly Africans (natives) and not persons of mixed blood. The latter live mainly in the Western Cape, and it is to them that the term " coloured " generally refers. See note 2 on page 149 above. The intention of article 9 is, however, clear: it was designed to distinguish between white persons and non-white persons.

[2] Article 1. Eybers, *op. cit.*, p. 286.

[3] For details of the pre-Union franchise laws, *see* JOURNAL, Vol. V, pp. 35-6.

[4] The *status quo* was not entirely maintained, however, because it was agreed that the non-Europeans in the Cape Colony should lose the right of candidature for Parliament, which—at any rate, in theory—they had hitherto enjoyed.

[5] Section 19 of the South Africa Act provides that " The legislative power of the Union shall be vested in the Parliament of the Union, herein called Parliament, which shall consist of the Queen, a Senate, and a House of Assembly". And section 59 enacts that " Parliament shall have full power to make laws for the peace, order and good government of the Union".

[6] A flexible, as contrasted with a rigid, constitution is one, the terms of which may be modified or repealed with no other formality than is necessary in the case of ordinary legislation.

arose whether the idea of entrenchment could be reconciled with these policies.

Quite clearly, the effective entrenchment of rights was incompatible with complete flexibility, and necessitated the introduction of an element of rigidity. On the other hand, it was certainly not necessary to abandon the unitary principle and resort to federation in order to achieve that element of rigidity. For while it is true that federal constitutions are invariably rigid, unitary constitutions, as the Convention was well aware,[1] need not be, and are not always, entirely flexible.[2]

The crux of the problem lay, of course, in the provisions that were to be made for future amendment of the proposed constitution and, more particularly, of any safeguard included therein. It was decided that the major part of the provisions of the constitution, including the electoral laws of the Union, should be alterable from time to time by the Union Parliament functioning bicamerally by a simple majority of votes.[3] But in order to give effect to the franchise compromise, persons in the Cape Province who qualified for the vote in terms of the Cape Laws as they existed at the time of Union, were not in the future to be disqualified on the ground of race or colour only, save and except by legislation passed by a two-thirds majority of the total membership of both Houses of Parliament in Joint Session. And, in addition, no repeal or alteration of this special procedure was to be valid unless passed in the same way.

The possibility of extending this method of entrenchment to a variety of other contentious matters was discussed,[4] and though it was desired as far as possible to maintain the flexible character of the constitution, the entrenchment was nevertheless applied to one other matter. The delegation from the Orange Free State were anxious to secure the equality of Dutch (Afrikaans) along with English as the official languages of the Union, and they welcomed the method of entrenching the Cape franchise as a convenient one for safeguarding the equality of the languages.[5] And so it came about

[1] *See* F. S. Malan's *Konvensie-Dagboek*, ed. Preller, 1951, Vol. 32, Van Riebeeck Society, pp. 29-30. The late Senator F. S. Malan was one of the Cape delegates, and his *Konvensie-Dagboek* is a valuable record of the proceedings written after each day's meeting.

[2] The Republic of Ireland and the Kingdom of Norway, to mention two examples only, have unitary constitutions which contain elements of rigidity.

[3] The South Africa Act specifically provides that the powers of the Senate and the House of Assembly shall be exercised by the majority vote of at least a stated quorum of members. *See* sections 30, 31, 49 and 50.

The bicameral procedure for ordinary law-making and for ordinary constitutional amendment is implicit in the South Africa Act. In this regard it is relevant to note that in the event of a deadlock between the two Houses, the Constitution provides for legislation by a simple majority of votes in a Joint Session. *See* section 63.

[4] Malan, *Konvensie-Dagboek*, p. 139.

[5] Dutch and English are the languages which were originally referred to in the South Africa Act. But by Act No. 8 of 1925 (which was passed by a two-thirds majority in joint session), it was provided that the term Dutch shall include Afrikaans.

that elements of rigidity were introduced into an otherwise flexible constitution.

The operative clauses which embodied these compromises are known as the entrenched sections of the South Africa Act, and it is advisable to set out their exact terms. Section 35 provides:[1]

(1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly, but no such law shall disqualify any person in the province of the Cape of Good Hope who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the province of the Cape of Good Hope by reason of his race or colour only, unless the Bill be passed by both Houses of Parliament sitting together and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

(2) No person who at the passing of any such law is registered as a voter in any province shall be removed from the register by reason only of any disqualification based on race or colour.

Section 137 provides that the official languages shall be treated on a footing of equality.

Section 152 enacts that "Parliament may by law repeal or alter any of the provisions of this Act". But there are two provisos. The first need not detain us;[2] the second, in so far as it is material, enacts that

no repeal or alteration of the provisions contained in this section . . . or in sections 35 and 137 shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

The Cape Franchise was thus "doubly entrenched", first, in Section 35 which prescribes the safeguard of a special procedure for "disqualification", and secondly, in Section 152 which enacts that that safeguard cannot validly be repealed or altered except in accordance with the same special procedure.

The Convention's work was done on May 11, 1909, and the draft constitution which it had prepared was thereafter approved by the Resolutions of the four Colonies and in Natal also by the electorate on a referendum.[3]

[1] Amendments, unnecessary to specify, were made by sec. 44 of Act No. 12 of 1936.

[2] In brief, the original composition of the Senate and the original number of members of the House of Assembly were to be unalterable for ten years after the establishment of Union.

[3] Minutes and Proceedings of the National Convention, pp. 345-9, 355-7.

Though the point is irrelevant in law, it has been contended that the entrenchment of the Cape Franchise was induced by British pressure upon the Convention. There would seem to be no warrant for this in history.

It is true that Lord Selborne, the British High Commissioner of the day, intimated to the President of the Convention, Lord de Villiers, that he looked forward

It remained now to give the draft constitution the force of law. The President of the Convention, Lord de Villiers, who was to be the Union's first Chief Justice, advised that in order to achieve this purpose, it would be essential to have recourse to legislation by the British Parliament. The Rt. Hon. J. X. Merriman, the Prime Minister of the Cape Colony, had suggested to Lord de Villiers that the constitution, as adopted by the Convention, should be confirmed by a Union-wide plebiscite without recourse to Westminster.[1] But de Villiers rejected these proposals. "I do not see how", he wrote in a letter to Merriman,[2]

"a scheme of Union could be carried through without the assistance and the intervention of the Imperial Parliament. That is the only legislature which, in theory, has the power of legislating for South Africa as a whole. . . . You say that we should consider carefully 'whether the Constitution should not be our own act approved by the Crown', but without the intervention of the Imperial Parliament there would have to be several identical colonial acts of Parliament and the fatal objection would remain that in order to effect the Union, each of these acts by dealing with the affairs of other Colonies, would be *ultra vires* of the Legislature which passes it. No such objection would exist to an Imperial Act."

The advice of Lord de Villiers was accepted,[3] and delegates were appointed to proceed to London to confer with the Secretary of State for the Colonies in reference to the passage of the Draft Constitution through the British Parliament. But they were specifically instructed to agree to such amendments only as did not involve any alteration in principle.[4] Some minor amendments were agreed upon in England before the draft was introduced into the Parliament at West-

to a general colour-blind franchise based on a "civilization" test. Furthermore, Selborne intimated that H.M. Government were "very anxious" about the franchise question, and that the transfer of the High Commission territories (Bechuanaland, Basutoland and Swaziland) was linked with that question. And it cannot be denied that these views were made known to the National Convention by Lord de Villiers. *See* Walker, *Lord de Villiers and his Times*, Constable, 1925, pp. 446-9. But whatever the views of Selborne and of the British Government may have been, it is abundantly clear that the real inspiration for the entrenchment came spontaneously and independently from the Cape, and that without that guarantee the Cape delegates and the Cape Parliament would not have consented to Union.

In point of fact, as stated by Sir James Rose-Innes, "The Cape Branch of the Afrikaner Bond—at that time the most powerful political organization in the Cape Province—suggested a proviso that the two-thirds required for abrogation should include an absolute majority of the voting representatives of the Cape. The suggestion was endorsed by the Bond Congress, and during the passage of the Union Bill through the (Cape) Assembly an amendment in that spirit was moved by a Bond member, and was only defeated by six votes—the majority doubtless being influenced by a reluctance to interfere with a compromise considered satisfactory to the National Convention". *The Native Franchise Question*, p. 4.

Moreover, the suggestion of British pressure has recently been specifically repudiated by the Hon. H. S. van Zijl, formerly Judge-President of the Cape Supreme Court (*Cape Times*, April 20, 1951) and by Lord Brand (*Cape Argus*, April 24, 1952). Brand was Secretary to the Transvaal delegates at the Convention, and van Zijl one of the Convention's legal advisers.

[1] Walker, *Lord de Villiers and his Times*, p. 426.

[2] The letter is quoted by Walker, *op. cit.*, pp. 427-9.

[3] Apparently without discussion. *See* F. S. Malan, *Konvensie-Dagboek*, p. 135.

[4] *National Convention: Minutes of Proceedings*, pp. 358-9.

minster.[1] And it thereupon passed through its various stages without further alteration; received the Royal Assent on September 20, 1909, under the title of the South Africa Act, 1909,[2] and came into force in the Union on May 31, 1910.

Such in broad outline was the genesis of the entrenched sections of the South African Constitution. The present crisis has arisen out of a controversy concerning the question whether those sections are, in view of the passing of the Statute of Westminster, 1931, still entrenched, or whether the Union Parliament may now by a bare majority in each House, sitting bicamerally, validly repeal or amend any section of the Constitution.

Legislation and Litigation during 1951.

Controversy was precipitated when in March, 1951, the Minister of the Interior, Dr. the Hon. T. E. Dönges, Q.C., moved in the House of Assembly for leave to introduce a Bill to make provision for the separate representation in Parliament of Europeans and non-Europeans in the Cape Province. The broad scheme of the Bill was to remove non-European voters from a "common voters roll", and to create two mutually exclusive communal rolls, one for Europeans and the other for non-Europeans—each class of voters being entitled to elect, separately, a certain number of representatives in Parliament.[3]

The Government proposed to obtain the passage of the Bill by the ordinary process of legislation, without observing the provisions of the entrenched sections. And against an objection, on a question of order, that this was contrary to the constitution, two main lines of defence were advanced. The first was that the removal of non-Europeans from the general or common roll to a special communal one, did not constitute a "disqualification" within the meaning of Section 35 of the South Africa Act. Secondly, it was argued that even if the Bill did involve disqualification, the entrenched sections were no longer binding in view of the passing of the Statute of Westminster.

The Government's case was closely contested by the Opposition. But it found favour with the Speaker of the House of Assembly and the President of the Senate;[4] and in June, 1951, after tenacious opposition, the Bill was promulgated in the form of an Act of Parliament entitled the Separate Representation of Voters Act, No. 46 of 1951. The battleground then shifted to the Courts.

[1] A schedule of these is set forth in the *Minutes and Proceedings of the National Convention*, p. 360.

[2] 9 Edw. VII. c. 9.

[3] The provisions of the Bill are summarized in the Editorial to this volume: "Union of South Africa (Constitutional) Separate Representation of Voters' Act." *See above.*

[4] *See* pp. 61 and 67 above. In holding that the Statute of Westminster had deprived the entrenched sections of their efficacy, Mr. President and Mr. Speaker considered it unnecessary to decide whether any disqualification under s. 35 of the Constitution was involved.

The challenge in the courts began when four non-European voters in the Cape Province, Messrs. Harris, Frank, Collins and Deane, applied to a full bench of the Cape Provincial Division of the Supreme Court for "an order declaring that the measure known as Act 46 of 1951 is invalid, null and void, and of no legal force and effect, in terms and by virtue of the provisions of Sections 35 and 152 of the South Africa Act, 1909, as amended". The notice of motion was directed to the Minister of the Interior and to the Electoral Officer for the Cape Province. The application was dismissed, however, on the ground that the Judges of the Provincial Division (de Villiers, J.P., Newton Thompson, J., and Steyn, J.) were bound by a decision given in 1937 by the South African Appellate Division in the case of *Ndlwana* v. *The Minister of the Interior*[1]—a decision of a superior court which their Lordships considered to be exactly in point, and which therefore constituted an insuperable hurdle for the applicants in the Provisional Division. While recognizing, however, that they were bound by the decision in *Ndlwana's case*, both de Villiers, J.P., and Steyn, J., expressed criticism of it.

An appeal was then brought before the Appellate Division, but as the Judgment was given in 1952, comment upon it and the events to which it gave rise must be deferred for the next volume of this JOURNAL.

Editorial Note

The Judgment of the South African Appeal Court on the Separate Representation of Voters Act, together with full argument, has been reprinted by Messrs. Juta & Co. (Cape Town), price 2*s.* 6*d.*

Our readers will also be interested to know that the constitutional controversy will be fully discussed, with special reference to its wider implications in the Commonwealth, in a book by Professor D. V. Cowen, which is now (December, 1952) in the course of preparation, and will soon be published. The view expressed by Professor Cowen in his earlier essay on *Parliamentary Sovereignty* (Reviewed in JOURNAL, Vol. XIX (pp. 399-401), to the effect that the Statute of Westminster had left the entrenched sections of the constitution intact, was upheld by the Appeal Court.—[ED.]

[1] 1937 A.D. 229. *See* JOURNAL, Vol. VI, p. 216.

XVI. UNION OF SOUTH AFRICA: PENSION SCHEME[1] FOR MEMBERS OF PARLIAMENT

W. T. Wood, B.A., LL.B., J.P.,
Clerk of the Senate.

J. M. Hugo, B.A., LL.B., J.P.,
Clerk of the House of Assembly.

The establishment of a pension scheme for Members of Parliament was first raised in the 1939 Session, when the following Motion was adopted by the House of Assembly:

That in the opinion of this House a compulsory pension scheme on a contributory basis should be established for members of Parliament; and that, with this in view, a Select Committee be appointed to inquire into and submit such a scheme, the Committee to have power to take evidence and call for papers and to have leave to confer with a Committee of the Senate.

The Select Committee envisaged in the Motion was duly appointed and, after having considered the subject of its enquiry, reported that it was agreed on the advisability of establishing a Fund for the payment of pensions to retired Members of Parliament. The particulars of the scheme evolved were embodied in a draft Bill which was submitted with the Committee's Report. The Report of the Committee, however, was not considered by the House and dropped when Parliament was prorogued on June 16 of that year.[2]

The matter was not raised again until the 1951 Session, when the following motion, moved by Mr. J. R. Sullivan, M.P. (Durban (Berea)), was agreed to by the House of Assembly:[3]

That a Select Committee be appointed to inquire into and submit a pensions scheme on a contributory basis for members of Parliament and Cabinet Ministers, the Committee to have power to take evidence and call for papers.

It is interesting to record that the mover of this Motion in his introductory remarks pointed out that Parliament in 1949 had established a precedent for granting relief to its former members in recognition of their Parliamentary service by awarding pensions in that year to two ex-members who had petitioned the House of Assembly for relief on the grounds that they were in impecunious circumstances and no longer able to maintain themselves owing to their advanced age and physical disability.[4]

The Select Committee which enquired into the matter on this occasion decided, *inter alia*, that no pension fund should be created as there can be no reasonable actuarial valuation of such a fund; that members' contributions should be paid into revenue and any benefits due to members or their widows should be met from revenue.[5]

[1] *See also* JOURNAL, Vols. VIII. 128; XVIII. 93. [2] For summary of debates on Motion and recommendations of *Sel. Com. see ib.* VIII. 128.
[3] For debate on Motion *see* 75 *Union Assem. Hans.* 6701.
[4] *See also* JOURNAL, Vol. XVIII. 93. [5] S.C. 7-'51.

A Bill giving effect to the Committee's recommendations was introduced and passed during the Session (see Parliamentary Service Pensions Act, No. 70, 1951).[1]

The following is a summary of the main provisions of the scheme adopted:

Application: The scheme, which is compulsory, applies to all members who were members on a fixed date, namely, July 1, 1951. (Ss. 1 and 2.)

Contributions: Contributions at the rate of £4 per month are payable by all members, except by the Prime Minister or an ex-Prime Minister. Such contributions must be paid until such time as a member ceases to be a member. (S. 2.)

Previous service: A member may elect, within a period of 90 days, to count his service prior to the fixed date for pension purposes. In respect of such previous service contributions at the rate of £4 per month for each month of such service are payable. Such arrear contributions may be paid off at a rate of not less than £2 per month. No interest is charged on arrears. (S. 3.)

Rate of pensions: A member who has contributed in respect of not less than 10 years' service shall be entitled, on the termination of his service as a member, to a pension of £250 p.a. for the first 10 years of his service and an additional £25 p.a. for each completed year of service in excess of 10 years: Provided that the maximum pension shall be £500 p.a., which is reached after 20 years' service. (S. 6.)

Age at which pension payable: The pension contemplated in paragraph 4 above shall be payable to a member who has attained the age of 55 years with effect from the day following the termination of his service. A member who is under the age of 55 years on the date of the termination of his service shall receive the pension as from the date on which he attains such age. (S. 6.)

Option of cash payment in lieu of pension: A member may elect to take an amount equal to the amount of his contributions in lieu of any pension which may be due to him. (S. 7.)

Other benefits: A member whose service terminates before he has contributed in respect of 10 years' service shall be entitled to an amount equal to his total contributions. (S. 8.)

Widow's pension: The widow of a member (provided she was married to him prior to or during the time he was a member) shall receive a pension equal to one-half of the pension her husband was receiving or would have received. A widow's pension is payable during widowhood only and she qualifies for a pension irrespective of her husband's age. (S. 12.)

Other benefits to widows: The widow of a member who has contributed in respect of less than 10 years' service shall be en-

[1] For debate on various stages of Bill *see* 76 *Union Assem. Hans.* 10,097; 1951 IV. *Sen. Hans.* 6741.

titled to an amount equal to her husband's total contributions. (S. 12.)

No benefits to other dependants: Dependants other than widows do not receive any benefits. (S. 12.)

Arrear contribution to be first charge against pension payable: Any amount due but unpaid by a member in respect of his pensionable service prior to the fixed date shall form a first charge against any pension awarded to him or to his widow. (S. 5.)

Prime Minister's pension: A person who has had service as Prime Minister shall be paid a pension of £1,500 p.a. on the termination of his service as a member, irrespective of the age he has attained or the period of his pensionable service. (S. 10.)

Prime Minister's widow's pension: The widow of a person who has had service as Prime Minister shall be paid a pension of £750 p.a. during widowhood only. (S. 12.)

Pensions of President of the Senate, Speaker of the House of Assembly, Ministers and Leader of the Opposition: A member (other than the Prime Minister) who has had service as President, Speaker, a Minister of the Crown or Leader of the Opposition, shall receive a pension of £100 per annum for each completed year of service as President, Speaker, Minister or Leader of the Opposition, in addition to any pension for which he may qualify as an ordinary member: Provided that the sum of the pensions payable to such a member shall not exceed £1,200 p.a. and that the minimum shall not be less than £100 p.a. (S. 11.)

Pension of Deputy-Speaker of the House of Assembly: A member who has had service as Deputy-Speaker shall in addition to any pension for which he may qualify as an ordinary member receive a pension of £50 p.a. for each completed year of service as Deputy-Speaker: Provided that the sum of the pensions payable to such a member shall not exceed £850 p.a. and that the minimum shall not be less than £50 p.a. (S. 11.)

Pension of Chairman of Committees of the Senate: A member who has had service as Chairman of Committees of the Senate shall, in addition to any pension for which he may qualify as an ordinary member, receive a pension of £30 p.a. for each completed year of service as Chairman of Committees of the Senate.

Pension of Deputy-Chairman of Committees: A member who has had service as Deputy-Chairman of Committees shall, in addition to any pension for which he may qualify as an ordinary member, receive a pension of £20 p.a. for each completed year of service as Deputy-Chairman of Committees: Provided that the sum of the pensions payable to such a member shall not exceed £640 p.a. and that the minimum shall not be less than £20 p.a. (S. 11.)

No contribution in respect of additional benefits: No additional contributions shall be paid in respect of additional benefits contemplated in paragraphs 14, 15 and 16. The provisions set out in

paragraph 5 shall *mutatis mutandis* apply in respect of such additional benefits.

General:

(*a*) A member whose pensionable service is more than 9 years and 6 months but less than 10 years shall be regarded as having completed 10 years' pensionable service and shall pay contributions for the whole period of 10 years. (S. 6.)

(*b*) If a member's service terminates by reason of the dissolution of the House no pension or other benefits shall be paid to him until the ensuing general election takes place. (S. 15.)

XVII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1951

By J. M. Hugo, B.A., LL.B., J.P.,
Clerk of the House of Assembly.

The following unusual points of procedure arose during 1951.

Oath or Affirmation of Allegiance administered by Judge.[1]—Members elected at by-elections subscribe the Oath or Affirmation of Allegiance before Mr. Speaker, but on the first day of the Session, a Judge, who had been commissioned by the Governor-General, administered the Oath or Affirmation to the 11 new members elected during the previous recess so that they were able to take part in the subsequent election of Speaker.[2] This also took place in 1896, the last occasion on which a Speaker resigned during a recess between 2 Sessions of the same Parliament.

Resignation of Speaker during Recess and Election of new Speaker.—After the withdrawal of the Judge who administered the Oath or Affirmation of Allegiance to new members the Clerk announced the resignation during the Recess of the Honourable J. F. (Tom) Naudé as Speaker and the House then proceeded to the election of a new Speaker.

Mr. J. H Conradie (Gordonia) was proposed by the Government and Mr. A. E. Trollip (Brakpan) by the Opposition, and on a division following a debate in which a number of members participated, Mr. Conradie was elected Speaker.[3]

(In 1933 Dr. de Waal was proposed in opposition to Dr. Jansen, and nominated by the Government of the day, but the Motion was withdrawn by the proposer.)

Unavoidable absence of Mr. Speaker.[4]—When the House met on February 26, the Clerk informed the House that Mr. Speaker (Mr. J. H. Conradie) was unavoidably absent and that, unless the House

[1] *See also* JOURNAL, Vols. VII. 178; IX. 132; XIII. 76. [2] 1951 VOTES, 23.
[3] *Ib.* 3. [4] *See* JOURNAL, Vol. XI-XII. 213.

otherwise directed, the Chairman of Committees would take the Chair of the House as Deputy-Speaker in terms of S.O. 17.

The Chairman of Committees (Dr. D. G. Conradie), who was in his customary seat in the House, then took the Chair as Deputy-Speaker, and the Mace which had been placed under the Table was placed on the Table by the Serjeant-at-Arms.

The Deputy-Speaker bowed to the right and to the left, read Prayers and proceeded with the business of the House.[1]

This procedure had been followed on 3 previous occasions, namely: in 1913, 1921 and 1942. On another occasion in 1934 the Speaker was ill when the Session commenced, and as both the Chairman of Committees and the Deputy-Chairman had died during the Recess an "Acting" Speaker was appointed.

Bills introduced in Senate.[2]—During the Session no fewer than 11 Bills were initiated and passed in the Senate and forwarded to the House of Assembly for its concurrence. Of these, 4 Bills dropped in the House of Assembly on prorogation.

Of the 11 Bills received from the Senate for concurrence 6 contained provisions which the Senate under S. 60 of the South Africa Act was unable to pass and which according to established practice were placed between brackets with a footnote stating that they did not form part of the Bill forwarded to the House of Assembly.[3]

Leave to be heard at Bar of House.[4]—On April 13 a petition was presented from G. J. Golding and 3 others, registered Coloured voters in the Cape Province, praying for leave to be heard at the Bar of the House in opposition to the Separate Representation of Voters Bill. Notice of a Motion was subsequently given that the prayer of the petition be granted. The Motion was not reached.[5]

Petition read by Clerk at Table.[6]—In accordance with S.O. 270 notice was given of a Motion that a petition from certain registered voters in the Union and South-West Africa requesting the rejection of any measure designed to remove Coloured voters of the Cape Province from the common roll of voters, be read by the Clerk at the Table.

The Motion was agreed to and the petition read by the Clerk.[7]

Amendment on 2 R. or 3 R. of Bills.[8]—During the 1949 Session Mr. Speaker Naudé informed the House that in future he proposed to follow the House of Commons' rule that if, on the question that a Bill be read a second or third time, the House decided that the word "now" or other words proposed to be omitted stand part of the Question, the original question would not be put.

This procedure was, however, departed from on February 14, on the Native Building Workers Bill at the request of certain members

[1] 1951 VOTES, 224. [2] *See* JOURNAL, Vols. X. 34; XI-XII. 214; XIII. 49, 89.
[3] 1951 VOTES, 252, 287, 306, 610, 718, 788; 9 Edw. VII. c. 9. [4] *See also* JOURNAL, Vols. I. 30; V. 89; XI-XII. 218; XV. 80; XVIII. 43; XIX. 231.
[5] 1951 VOTES, 438, 476. [6] *See also* JOURNAL, Vol. IX. 136.
[7] 1951 VOTES, 504. [8] *See also* JOURNAL, Vol. XVIII. 220

who having voted in favour of their amendment wished also to vote for the Second Reading of the Bill. Thus when the House had decided to retain all the words after "That" proposed to be omitted, the Motion for the Second Reading was put and a division called.[1]

Clauses of long Bill put in groups.—When the House went into Committee on the Merchant Shipping Bill, consisting of 358 clauses, the Chairman stated that following a practice adopted in the House of Commons he proposed, if there were no objection, to put as one question groups of clauses which were non-contentious. As a result the proceedings in Committee were much expedited.[2]

Recommendation in Report of Select Committee amended.—Following precedents established in 1944,[3] when the House was in Committee to consider the recommendations contained in the Report of the Select Committee on Crown Lands, an amendment to a recommendation in the Report was moved and agreed to.[4]

Minister not being a member has no seat in either House.—Dr. Bremer, Minister of Health and of Social Welfare, in order to be nominated as a candidate in the Ceres by-election, resigned as Senator on March 24, from which date (under Ss. 51, 52 and 55 of the South Africa Act) he did not have a seat in either House until May 7, when having been elected he subscribed the Affirmation of Allegiance. During the period mentioned other Ministers tabled documents and replied to questions on his behalf.

Legislative Capital.—On March 2, Mr. A. G. Barlow (Hospital) gave notice of the following Motion, namely:—

That this House is of opinion that the judicial and legislative capitals of the Union should be transferred to Pretoria, and therefore requests the Government to consider the advisability of taking the necessary legislative and other steps to give effect thereto.

The Motion was not reached.[5]

Additional Estimates of Expenditure.—The Finance Act of 1951[6] amended the Exchequer and Audit Act of 1911[7] by increasing from one million to 3 million pounds the amount up to which Governor-General's special warrants to defray unforeseen expenditure may be granted in anticipation of the approval of Parliament.

The Minister of Finance in his Second Reading speech on the Finance Bill stated that this increase was necessitated not only by the corresponding increase in the annual State expenditure but also by the decision of the Treasury to have in future only one set of Additional Estimates to be presented to Parliament early in March. During recent years it had been the practice to present Additional Estimates in January and Second Additional Estimates in March.[8]

General.—Apart from the usual House and Sessional Committees

[1] 1951 VOTES, 155. [2] 76 *Assem. Hans.* 9262. [3] 1951 VOTES, 796.
[4] *Ib.* 675. [5] *Ib.* 254; *see also* 9 Edw. VII. c. 9, s. 23.
[6] No. 56 of 1951. [7] No. 21 of 1911.
[8] 76 *Union Assem. Hans.* 9992.

set up, 8 Select Committees were appointed: one on a Bill which had been read a Second Time, 3 on the subject matter of Bills before Second Reading, one on a Hybrid Bill, 2 on Private Bills and one on a Pension Scheme for members of Parliament.

Incomplete Enquiries.—The Select Committee on Public Accounts reported that, owing to the late stage of the Session at which Part III of the Report of the Controller and Auditor-General on Appropriation Accounts for 1949-50, as well as some of the Reports of the Controller and Auditor-General on Regulatory Boards' Accounts had been referred to it, it had been unable to enquire into these reports, and recommended that they be again referred to the Committee next Session.

The Select Committees on the subject of the Liquor Bill and on the subject of the Professional Boxing and Wrestling Control Bill *both* reported that owing to the advanced stage of the Session and the commencement of morning sittings, they were unable to complete their respective enquiries before the termination of the Session. Both Committees recommended that the Government should appoint commissions, composed of members of the Select Committees, to continue the enquiries during the Recess.[1]

The Select Committee on the Hotels Bill reported that owing to the conflicting nature of the evidence tendered before it, it could not come to definite conclusions in regard to certain provisions in the Bill without further investigation into the whole position of the hotel industry. As the Session had already reached an advanced stage it considered that it could not complete its enquiry and recommended that the Committee be re-appointed early next Session to continue its enquiry. It also suggested that the evidence taken be printed and published for general information.

The Select Committee on the Southern Suburbs of Cape Town Water Supply Act Amendment (Private) Bill, re-appointed to continue its enquiry commenced in the previous Session, held only one meeting towards the end of the Session. From the evidence adduced it was apparent that the negotiations commenced in 1950 between the parties to the Bill could not be finalized before the termination of the Session and the Committee consequently recommended that it be re-appointed during the 1952 Session to complete its enquiry.

Absence of member from Select Committee on *Opposed* Private Bill.[2]—At the meeting of the Select Committee on the Southern Suburbs of Cape Town Water Supply Act Amendment (Private) Bill, an *opposed* Private Bill, one of the members was absent without leave, and in terms of S.O. 59 (2) (Private Bills), his absence was specially reported to the House. As was the case on a similar occasion in 1950, the Chief Whip of the Party to which the member belonged gave an explanation and the House granted indulgence.[3]

[1] 1951 VOTES, 663; *see also* JOURNAL, Vols. VI. 215; XIX. 234.
[2] *Ib.* Vols. XIV. 189; XIX. 233.
[3] 1951 VOTES, 717.

Reconstitution of re-appointed Select Committee on *Opposed* Private Bill.—When the Select Committee on the Southern Suburbs of Cape Town Water Supply Act Amendment (Private) Bill was re-appointed, a new Chairman had to be appointed as the Chairman of the Committee set up in the 1950 Session had in the meantime been elected Speaker of the House. The new Chairman was the member next on the list of members of the 1950 Select Committee and a new member was added to the personnel of the Committee.[1]

Member of Parliament attends Select Committee in advisory capacity.—A member who had first of all been appointed as a member of the Select Committee on the subject of the Companies Amendment Bill, but who was subsequently discharged from service on the Committee, attended several meetings of the Committee in an advisory capacity because of his specialized knowledge of certain aspects of the Committee's enquiry.[2]

XVIII. THE PROPOSED FEDERATION OF THE RHODESIAS AND NYASALAND: EVENTS IN 1951[3]

By Erskine Grant-Dalton, M.A.(Oxon.),
Second Clerk-Assistant of the Legislative Assembly of Southern Rhodesia.

On November 8, 1950, the Secretary of State for the Colonies announced that the United Kingdom Government thought it desirable that there should be a fresh examination of the problem of the closer Association of the neighbouring Central African Territories of Southern Rhodesia, Northern Rhodesia, and Nyasaland, and that they had accepted a suggestion made by the Prime Minister of Southern Rhodesia that a conference should be held in London for that purpose. It was emphasized that the conference would be purely exploratory; that the participating Governments would not be committed to the adoption of its proposals; and, that adequate opportunity would be afforded for public discussion of such proposals.

The conference, attended by officials of the 3 Central African Governments, of the Central African Council, and of the Commonwealth Relations Office and Colonial Office, was held in London from March 5 to 31, 1951.

The Report[4] of this Conference on Closer Association in Central Africa was published together with a Geographical, Historical and Economic Survey of the three territories[5] and a Comparative Survey of the Native Policy in the Territories.[6] The facts presented in these

[1] *Ib.* 44.
[2] *See also* JOURNAL, Vols. IV. 30; V. 49; VI. 63; VII. 109; VIII. 54; IX. 49; XI-XII. 61; XIII. 85; XIV. 191; XVI. 76.
[3] S.C. 5'51, X & XXVI.
[4] *Cmd.* 8233.
[5] *Cmd.* 8234.
[6] *Cmd.* 8235.

reports are worthy of deep study, for it is in their light that the constitutional problems to be overcome in bringing the three Territories together must be considered.

Before giving the outline of the constitution proposed by this Conference, it is necessary to summarize the present Constitutional status of each of the Territories. Southern Rhodesia has since 1923 been fully self-governing in domestic affairs, subject to certain reservations, particularly with regard to differential legislation affecting Africans. The executive power is in the hands of Ministers, chosen by the leader of the predominant party, who are responsible to a single-chamber legislature elected on a common roll with Europeans and Non-Europeans being subject to the same qualifications. Her Majesty's Government in the United Kingdom are responsible in the international field for the affairs of Southern Rhodesia and usually enter into formal agreements on her behalf. Certain agreements, particularly those relating to trade, are, however, entered into by Southern Rhodesia directly, and the Colony generally deals direct with Commonwealth countries and, in local matters, with neighbouring foreign territories.

Northern Rhodesia and Nyasaland are Protectorates, and Her Majesty's Government in the United Kingdom, through the Secretary of State for the Colonies, are ultimately responsible to the United Kingdom Parliament for their administration. Each territory is administered by a Governor who is advised by an Executive Council including Unofficial Members; in Northern Rhodesia two of these Unofficial Members are responsible for the administration of Departments, and there are special arrangements concerning the weight to be given to the views of Unofficial Members of the Executive Council. Both Legislative Councils consist of Official Members and Unofficial Members, including Europeans and Africans. In Northern Rhodesia the Unofficial Members are in a majority, but power is reserved to the Governor to carry through by certification any measure required in the interest of public order, public faith, or good government.

The conference had therefore to devise a constitution in outline which would: (*a*) not in any way offend the people of Southern Rhodesia by taking away from them powers which they already enjoyed; (*b*) maintain Colonial Office control of the 2 Northern Territories; and (*c*) give sufficient powers to the Federal Government to enable it to be effective in the spheres allotted to it. The need to reconcile these three apparently conflicting aims caused the conference to rule out the proposal to amalgamate the 3 States under a single Government, an idea much favoured in Southern Rhodesia;[1] and also to discount the suggestion that the 3 Territories should enter into a "League", to which by agreement all 3 would hand over certain functions and powers, to be exercised by it on their behalf, the dis-

[1] *See* JOURNAL, Vol. XIV. 191-200.

tinctive feature of this scheme being that the "League's" governing body and legislative organ would be projections of the Governments and Legislatures of the 3 separate territories, and would exercise only a delegated authority.

The solution recommended was that of a true federal system, and the name of the Federation, it was suggested, should be "British Central Africa". The report states: [1]

41. Under our proposals the federal authority (and not the territorial) would exercise full control over a wide field of specified matters, especially those that transcend territorial boundaries or that concern the external relations—economic and otherwise—of the territories with the rest of the world. Within the federal field the Government and Parliament of British Central Africa would, subject to certain checks and balances, in no way be subordinate to those of the territories.

42. In respect of all matters not specified as being within the federal field, the authority and the constitutional position of each of the three territories and their relation to Her Majesty's Government in the United Kingdom would remain as at present, and in particular their Governments and Legislatures would in no way be subordinate to those of British Central Africa. The many matters that would remain within the purview of the individual territories would include all those that are most closely related to the life and ways of the African inhabitants, such, for example, as African education, health, agriculture, land and settlement questions, and native administration generally.

43. We recognize, nevertheless, that action within even the proposed federal field might at times impinge in some degree on African interests. Our proposals, therefore, provide both for representation of Africans in the Central Parliament and for the vesting of special powers in an African Affairs Board and in a Minister for African Interests. This Minister—though a member of the Central Parliament—would be outside politics and would be appointed by, and responsible to, an authority, namely, a Governor-General who would himself be responsible for this purpose to Her Majesty's Government in the United Kingdom.

44. In order to promote co-ordination of effort and harmonious working between the authorities of British Central Africa and those of the three territories, we have proposed in a number of spheres the establishment of consultative machinery. We have no doubt that the increasing degree of intercourse between the territories would conduce to the same end.

45. The scheme that we put forward is not a mere compromise between divergent views. We are united in believing that it has great positive merits in the interests of all the territories and of all their inhabitants, and that it is fully consistent with the United Kingdom Government's responsibilities towards the African inhabitants. We especially invite attention to our proposal to set up certain new institutions (an African Affairs Board, a Development Commission, and a Loans Council) for which the association of the territories would provide full scope, and which we believe would be of inestimable benefit to British Central Africa and to the people of all its territories.

* * * * *

48. In framing our proposals we have had to take account of the fact that the three territories have a differing constitutional status and are at different stages of material development. In the constitutional sphere we have had to consider how, without infringing Southern Rhodesia's self-governing status, to provide for His Majesty's Government's special responsibility for the two northern territories and in particular for African welfare and advancement.

[1] At p. 15. *Cmd.* 8233 at p. 15.

We propose that the three territorial Governments and Legislatures should retain their existing status and powers within the spheres assigned to them under the scheme which we put forward, the Northern Rhodesia and Nyasaland Governments remaining responsible to His Majesty's Government in the United Kingdom. In the federal sphere the Government and Legislature of British Central Africa would have full responsibility with a Cabinet system of government, subject, however, to the safeguards described in the following paragraphs. These safeguards are designed to preserve the special responsibility of the United Kingdom Government and Parliament in respect of Northern Rhodesia and Nyasaland while not interfering with the efficient working of the Central African constitutional arrangements.

49. We propose that an African Affairs Board should be established consisting, under its Chairman, of the three Secretaries for Native Affairs of the territorial Governments, one elected or unofficial member drawn from each of the territorial Legislatures and one African from each territory. The function of this Board would be to examine before publication from the point of view of African interests all proposed federal legislation (both principal and subsidiary) and to report thereon to the federal Government. Reference of *all* such proposed legislation to the Board would be obligatory. At the time of publication of a Bill the federal Government would be obliged to make the views of the Board known to the Legislature in the form of a statment. If the Board reported that the proposed legislation would, in its opinion, be detrimental to African interests, it would be open to the Government to proceed with it and the Legislature to pass it, but the Governor-General would be required to reserve it for the signification of His Majesty's pleasure and the matter would then be referred to the Secretary of State. The Board would also hold a general watching brief in respect of all matters affecting African interests so far as they related to federal subjects and in addition it would have the positive task of promoting liaison between the three territories in all matters affecting African affairs.

50. The Chairman of the African Affairs Board would be the Minister for African Interests in the federal Cabinet, who would be appointed by the Governor-General from among the members representing African interests in the British Central African Legislature. In making and terminating the appointing of this Minister the Governor-General would act in his own discretion, but subject to the approval of the Secretary of State. The Minister for African Interests would have the special function in the Cabinet of proposing any measures, thought by him to be desirable in the interests of Africans and of considering measures proposed by other Ministers to make sure that they were not detrimental to African interests. As a member of the Cabinet, it would be his duty, subject to his special responsibilities for African interests, to co-operate with and assist his Cabinet colleagues in the conduct of the affairs of the federal Government. Normally, agreement on any representations made by the Minister for African Interests would no doubt be reached by the ordinary methods of consultation and discussion; in a case, however, where it was found impossible to arrive at a solution and the Minister for African Interests took the view that the executive action proposed by Ministers would be detrimental to African interests, he would have the right to report this view to the Governor-General. The Governor-General would then be required to certify to that effect and to refer the question to the Secretary of State, who would be able to give or withhold his approval. The proposed measure would not be carried out until the decision of the Secretary of State had been made known, unless exceptionally the Governor-General were to certify, after representation by the Prime Minister but on his own responsibility, that on grounds of urgent public necessity action should proceed.

The Conference proposed a Unicameral Federal Legislature of 35 members, of whom 17 would represent Southern Rhodesia, 11

Northern Rhodesia, and 7 Nyasaland. Three of the representatives from each territory would be members specially nominated to represent African interests. In each of the Northern territories two of these would be Africans, and in Southern Rhodesia both European and Non-European qualified voters would be equally eligible for election.

Such, in very broad outline, was the scheme proposed by the conference of officials. While it was universally regarded as a very able compromise and an immeasurable advance on anything previously suggested for the unification of the 3 territories, certain features, notably the African Affairs Board and the suggestion that in the Federal Cabinet should be a Minister for African Interests chosen, not by the Prime Minister, but by, and directly responsible to, the Governor-General, were looked upon by many as extraordinary proposals.

Another feature of the proposals which did not appear acceptable to the people of Southern Rhodesia was the provision for a large number of nominated members in the Federal Legislature.

However, these proposals did at least provide a solid foundation for future discussions, and in September, 1951, a conference took place at the Victoria Falls, in Southern Rhodesia, between the Secretaries of State for Commonwealth Relations and the Colonies, and representatives of the Territorial Governments.

The statement issued at the close of this Conference concluded:

> In announcing the present Conference it has from the outset been made clear that there was no intention of reaching decisions at it binding on any Government. It was realized that such a conference might disclose points of difference with regard to the principle of federation as well as to the proposals made in the Report to bring it into being. This has proved to be the case. It has become evident that further discussion within each territory and exchanges of views between the four Governments will be necessary, and the Conference has therefore adjourned. It is hoped that the position can be sufficiently clarified to enable the Conference to reassemble in London about the middle of next year.
>
> On the main question of federation, as so far presented and examined, the Conference, with the exception of the African representatives, showed itself favourable to the principle of federation. The representatives of African interests in Northern Rhodesia explained that Africans would be willing to consider the question of federation on the basis of the Report of the London Conference of officials after the policy of partnership in Northern Rhodesia had been defined and, as so defined, put into progressive operation.

During 1952 further conferences were held, both in London and at the Victoria Falls, and the original scheme was, as a result of these talks, considerably modified. However, an outline of subsequent events must be held over for the 1952 Volume (XXI) of the JOURNAL.

NOTE.—(*The modified plan for a Constitution was issued in* 1952 *as Cmd.* 8573. *For discussions on this Report in S.R. Assembly see* 32 *S. Rhod. Hans.* 2911-2922; 3323, 3504, 3731.)

XIX. "THE MUDGAL CASE"[1]

By S. L. Shakdher,
Officer on Special Duty, Parliament Secretariat.

On June 6, the Prime Minister (Shri Jawharlal Nehru) moved the following Motion in the House:

1. That a Committee consisting of Shri T. T. Krishnamachari, Professor K. T. Shah, Syed Nausherali, Shrimati G. Durgabai, Shri Kashinathrao Vaidya be appointed

(*a*) to investigate the conduct and activities of Shri H. G. Mudgal, Member of Parliament, in connection with certain dealings with the Bombay Bullion Exchange, which include canvassing support and making propaganda in Parliament on problems like option business, stamp duty, etc., and receipt of financial or business advantages from the Bombay Bullion Exchange; and

(*b*) to consider and report whether the conduct of the Honourable Member was derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect from its Members;

2. that Shri T. T. Krishnamachari be appointed the Chairman of the Committee;

3. that the quorum of the Committee shall be three:

4. that the Committee may hear or take evidence connected with the matters referred to the Committee or relevant to the subject matter of the inquiry, and that it shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential;

5. that Shri H. G. Mudgal has leave to be heard before the Committee by himself or by Counsel, if he thinks fit and that the Committee may hear the Counsel to such extent as they think fit on behalf of any other person;

6. that the Honourable the Speaker may, from time to time, issue such directions to the Chairman of the Committee as he thinks necessary for regulating the procedure and organization of the work of the Committee.

Residuary powers were delegated to the Honourable the Speaker so that the work of the Committee might not be delayed for any technical requirement. It is important to note that under the Indian Parliamentary Procedure the practice is rapidly developing that more and more powers are vested in the Honourable the Speaker, who is recognized as the fit person to work out the details of rules and intentions of the House, once the rules or basic principles have been approved by the House.

In moving the Motion, the Prime Minister said that the dignity of the House and the proper behaviour of every hon. member was dear to the House, and he felt that any action taken by a member which might not be in consonance with propriety and good behaviour and what is expected of him, should be inquired into. The Prime Minister then gave the following brief history of the case:

Some time ago, in March, information reached us that at a Board meeting of the Bombay Bullion Association held on March 9, 1951, the President in-

[1] *Reports from the Committee on the Conduct of a Member with Minutes and Appendices.* (Parliament Secretariat, New Delhi, August, 1951. *Rs.* 5, *Br. stg.* 8s.)

formed the Directors that in connection with some of the problems like option business, stamp duties, etc., about which the Association wanted to agitate, a Member of Parliament had agreed to canvass support and make propaganda in Parliament on payment of *Rs.*20,000. The name of the Member was mentioned. There was some opposition to this proposal, but ultimately the Directors decided that *Rs.*5,000 should be utilized for this purpose. This was recorded in the minutes of the meeting, though no name was mentioned.

At a subsequent meeting of the Board of the Bullion Association held on March 30, the President informed the Members that *Rs.*1,000 out of the *Rs.*5,000 sanctioned by the Board, had been paid to Shri Mudgal, who was already moving in the matter actively. It was further stated that Shri Mudgal had invited him to Delhi to meet some of the M.P.s and the Ministers concerned, with whom he was arranging interviews. Shri Mudgal had promised to put questions in Parliament and thus create the necessary atmosphere for getting support to the objectives of the Bullion Association.

Meanwhile, on March 24, the Finance Minister received a letter from Shri Mudgal stating that the President and some Directors of the Bombay Stock Exchange were coming to Delhi and asking for an appointment for them. The Finance Minister replied that he did not understand why the Bombay Stock Exchange members should seek to make an appointment with him through Shri Mudgal. He would prefer to deal direct with any request that might be made.

Late in March Shri Mudgal sent notice of a question to be put in Parliament. This question, No. 2,742, was put down for an answer on April 2. In this question Shri Mudgal inquired whether Government are aware of the views of the President and the Directors of the Bombay Bullion Exchange that smuggling of Bullion resulting in the loss of foreign exchange can be stopped by permitting regulated imports of Bullion. The Finance Minister replied that Government were aware of the views expressed, but did not consider that the situation was such as to warrant any change in their present policy in the matter.

The request for an interview and the question in Parliament appeared to be in furtherance of the offer made by Mr. Mudgal to carry on an agitation in the interests of the Bullion Association, in Parliament, for which it had been stated he had asked for a sum of money.

On April 20, I had an interview with Shri H. G. Mudgal in the course of which I informed him of the information we had received. He told me in answer that he was connected with an organization which published the *Indian Market* and did research work also. In the course of his professional work, he and his staff had helped the Bullion Association by preparing a pamphlet and a memorandum. His staff had been paid *Rs.*1,000 for the pamphlet and another *Rs.*1,000 for the memorandum. Further the Press of the *Indian Market* had been paid *Rs.*700 for printing charges of the memorandum. He denied having asked *Rs.*20,000 or any other sum from the President of the Bombay Bullion Association. Whatever he had received was, according to him, in connection with his professional work and there was nothing underhand about it.

I met Mr. Mudgal for a second time later and further discussed this matter with him. He also gave me his reply on the lines which I just mentioned in writing. The explanation that he gave me did not appear to me to be satisfactory.

The Prime Minister said that an *ad hoc* Parliamentary Committee would perhaps be more suitable for an investigation in such a matter than the Committee of Privileges of the House.

An hon. member then asked the Honourable the Speaker whether he was consulted in the matter and if he had come to the conclusion

that there was *prima facie* evidence for the appointment of the Committee.

The Honourable the Speaker replied that he had been shown the evidence in the possession of the Government and the correspondence between the Prime Minister and Shri Mudgal and he was satisfied that there was a case for the appointment of the Committee to inquire into the matter. Other members asked why the matter had not been referred to the Committee of Privileges but to an *ad hoc* Committee, to which the Honourable the Speaker replied:

> It is within the powers of the House to constitute other special committees if there are any special circumstances and inquiries to be made. There is nothing inconsistent in that. I may also say that it is a moot question to be considered as to whether any such conduct as alleged is really in a sense a breach of the privilege of the House or something different. A member may behave in a manner in which the House would not like him to behave and yet it may be argued that it is not a breach of privilege. In all such circumstances the practice in the House of Commons has been to constitute a special committee and the procedure in making the Motion is the procedure that is usually adopted in the House of Commons, even though there is a Committee of Privileges.

During debate the question was raised as to whether it was right for the Government to nominate the Committee. Some hon. members urged that the Honourable the Speaker should appoint the Committee as they had confidence in his selection. The Honourable the Speaker stated that the Motion was in the hands of the House and it was, of course, open for changes to be made in the personnel of the Committee, should the House so desire.

The House then pressed the Prime Minister to give further details so that they could decide for themselves whether a *prima facie* case had been made out. The Prime Minister then read out the correspondence between him and Shri Mudgal. The Honourable the Speaker said that whatever information was available in support of the case had been supplied by the Leader of the House and that he could not understand what further discussion could take place at this stage.

The Honourable the Speaker then called upon Shri Mudgal, who said that, before he proceeded with his statement, he was anxious to know from the Honourable the Speaker whether his statement that there was a *prima facie* case would not amount to prejudicing the minds of the members.

To this the Honourable the Speaker replied that it ought not to, because it was perfectly competent for every member to come to his own decision on what the Prime Minister had stated.

Shri Mudgal, in making his personal explanation, said that he was as jealous of the propriety, dignity and prestige of the House as any other member. He appealed to the House to keep an absolutely open and unprejudiced mind, in spite of what they had been told, and in spite of the observations from the Chair. He then, during a

long explanation, denied the allegations made against him and said that whatever he had done with the Bombay Bullion Association was in his professional capacity and above board. He vehemently argued against any allegations that he had in any way asked for any consideration, either business or financial, for his work in Parliament on behalf of the Association.

An hon. member then moved that the debate be adjourned till June 8, which, on vote being taken, was agreed to.

When the debate was resumed on June 8, some amendments relating to procedure (of which notice had been given) were taken and some were agreed to. In regard to the remainder, it was explained that as the Honourable the Speaker had the power to regulate the procedure and organization of work of the Committee they could be left to be determined by him if any occasion arose.

Question on the Motion was then put and agreed to.

Proceedings of Select Committee.—The first meeting of the Select Committee was held on June 9. At this meeting, the papers containing the documentary evidence in the possession of the Government were Tabled and Shri Mudgal was informed that a copy of these papers would be sent to him separately and also that further meetings of the Committee would be held in Bombay some time towards the end of June. He was asked to keep himself in readiness with his evidence, etc.

The Committee then adopted the following Procedure:

1. All evidence shall be taken on oath.
2. The form of oath shall be as follows:
   "I swear in the presence of Almighty God (solemnly affirm) that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false. So help me God."
3. The sittings of the Committee shall be held in private.
4. All strangers shall withdraw whenever the Committee is deliberating.
5. The proceedings shall be opened by the Attorney-General.
6. Witnesses shall either be called by Shri Mudgal or by his Counsel or by the Committee.

This was approved by the Honourable the Speaker and formed his Directive No. 1 to the Chairman of the Committee.

In response to a request from the Committee, the Honourable the Speaker gave the following direction to the Chairman of the Committee:

Directive No. 2 of June 10, 1951.

The Committee on the Conduct of a Member that has been constituted is a Court of Honour and not a Court of Law in the strict sense of the term. It is therefore not bound by technical rules. It has to mould its procedure so as to satisfy the ends of justice and ascertain the true facts of the case. In Courts of Law, excessive cross-examination eventually turns into a battle of wits and that should not be the atmosphere of a Court of Honour. Here the effort should be to simplify the procedure and to lay down clear rules which ensure ascertainment of Truth, fairplay and justice to all concerned. I am,

therefore, of opinion that normally the questions should be put by the Chairman and the Members, but that does not mean that the Counsel appearing in the case is debarred from putting any questions whatsoever. It is open to the Committee in the light of particular circumstances, of which they alone are the best judges, to permit the Counsel to put questions to a witness with the permission of the Chairman. I feel that this should meet the requirements of the present case.

Directive No. 3 of June 20, 1951.

1. The Committee shall have power to require the attendance of persons or the production of papers or records if such a course is considered necessary by the Chairman for the discharge of its duties.

2. In further amplification of paragraph 5 of Directive No. 1, the Committee may take such assistance from the Attorney-General in the conduct of the proceedings of the Committee as they may think fit.

Directive No. 4 of June 20, 1951.

I approve the directive of the Committee that summons to witnesses shall be signed and issued by the Secretary on behalf of and under the authority of the Chairman of the Committee.

The Report.—The Committee held further meetings in Bombay from June 29 to July 7, which took place in the Council Hall Buildings. Shri Mudgal sought the permission of the Committee to be represented by Counsel, Shri H. R. Pardivala, M.L.A., Advocate, Bombay. The request was granted. Throughout the proceedings Shri Mudgal and his Counsel were present except when the Committee deliberated. The Attorney-General was present throughout the meetings held at Bombay.

In opening the case, the Attorney-General summarized the material which had already been presented to the Committee and formulated finally the following questions to which the Committee might address itself:

(i) Did Shri Tiwari make the statements attributed to him at the meetings of March 9 and 30, 1951?

(ii) Are the accounts given by Shri Nadkarni of the happenings of these two meetings substantially correct?

(iii) Had the conduct of Shri Mudgal in putting the question and seeking an interview a connection with what happened at the two meetings in Bombay? And what was the nature of this connection?

(iv) Were any payments made by the Bombay Bullion Association either to Shri Mudgal or to Shri Mudgal's organization? The important question will be: In respect of what services were the payments made?

(v) What were the alleged services rendered by Shri Mudgal's organization to the Association?

The Committee called 24 witnesses. The Counsel for Shri Mudgal decided to call Shri Mudgal to give evidence. All the witnesses, including the 2 witnesses who appeared at the instance of Shri Mudgal, were called by the Committee. The examination of witnesses was, excepting Shri Mudgal and the 2 witnesses of Shri Mudgal, conducted by the Committee, and the Counsel for Shri Mudgal was allowed to cross-examine them. The examination of Shri Mudgal and his 2 witnesses was conducted by Shri Mudgal's

Counsel and they were further examined by the Committee. The Attorney-General intervened only on a few occasions to put questions to the witnesses. At the end of the evidence, the Counsel for Shri Mudgal addressed the Committee. Thereafter the Attorney-General explained the scope of the terms of reference to the Committee about which some doubt was expressed by the Counsel for Shri Mudgal.

Facts of the Case.—The facts of the case as discovered by the Committee and disclosed in paragraph 13 of the Committee's Report, are briefly as follows:

(*a*) Shri Mudgal runs a small organization in the name of *H. G. Mudgal Publications.* He also controls a printing press called the *Indian Market Press* which he got on lease basis during February, 1951. The *H. G. Mudgal Publications* has been in existence since 1937, and among other things brings out an economic weekly called the *Indian Market* and a fortnightly labour bulletin called *Kamgar.* Shri Mudgal is the proprietor of this organization and also the editor of the *Indian Market.*

(*b*) Shri Mudgal was elected to Parliament in April, 1950. In January, 1951, Shri Mudgal appointed one Shri K. G. Lalwaney as an Assistant Editor in his organization to help him in the production of the *Indian Market.* The functions assigned to him were to contact business men, industrialists, etc., who were willing to utilize the *Indian Market* for publicity of their views. Shri Lalwaney was to collect necessary materials from these sources and publish articles under the direction of Shri Mudgal.

(*c*) Immediately after his appointment in the *H. G. Mudgal Publications, Shri Lalwaney* contacted Shri Tiwari, the President of the Bombay Bullion Association. It was arranged between them that the publicity work of the Bombay Bullion Association should be entrusted to H. G. Mudgal Organization. The Bombay Bullion Association had certain alleged difficulties, especially in regard to stamp duty, option business, etc. The estimate *Rs.* 20,000 was proposed for the publicity work, which included expenses in connection with press conferences, printing of pamphlets to be distributed to members of Parliament, interviews with Ministers and other parliamentary contacts.

(*d*) After he had discussed the matter with Shri Lalwaney, Shri Tiwari brought it before the Board of the Bombay Bullion Association for their consideration on March 9, 1951. One of the Directors of the Board was an official of the Government of Bombay. It appears that when the proposal of entrusting the publicity work of the Association, which included propaganda among the members of Parliament, etc., on payment through a member of Parliament, was discussed in the Board, he objected to the propriety of asking an M.P. to undertake the cause of the association in Parliament on payment. The Board, however, approved the proposal but limited the expenses to *Rs.* 5,000.

(*e*) Immediately thereafter the Government member made a report to the Government as to what happened at the Board meeting. The matter was again discussed at the meeting of the Board on March 24, 1951. Meanwhile, Shri Mudgal gave notice of an amendment to the Forward Contracts Regulation Bill, 1950, which was then pending before Parliament, that the Bill be circulated for eliciting public opinion thereon. A copy of this amendment was sent to the Bombay Bullion Association by Shri Mudgal through his Assistant, Shri Lalwaney. Shri Mudgal also gave notice of a question in Parliament on the problem of gold smuggling, and wrote a letter on March 18, 1951, to his Assistant, Shri Lalwaney, asking him to persuade the Bombay Bullion Association to pay *Rs.* 7,000 for memorandum, arrangements for delegation and other parliamentary contacts for the rest of the Session. Shri Mudgal drew up a memorandum for the Association which they were to place before the Ministers of the Central Government in connection with their grievances. He also arranged a Press Conference for the President and one or two Directors of the Association and their interview with Ministers and gave them a dinner during their visit to Delhi. On March 25, 1951, Shri Mudgal wrote a further letter to Shri Lalwaney requesting him to persuade the Bombay Bullion Association to pay their fees. A payment of *Rs.* 1,000 each time on two occasions was made to *H. G. Mudgal Publications* by the Bombay Bullion Association. These payments were part payments and the entries in the cash book of the Association and the receipts granted by the *H. G. Mudgal Publications* corroborate that they were only part payments towards an unspecified amount.

(*f*) After the Prime Minister spoke to Shri Mudgal about this matter in April, Shri Lalwaney left the services of Shri Mudgal. Curiously, on June 26, *i.e.*, 3 days before the commencement of the meetings of the Committee—18 days after the Motion in Parliament was adopted and 7 weeks after Shri Lalwaney had severed his connection with Shri Mudgal—Shri Mudgal gave him a certificate, saying:

> Shri Lalwaney strictly adhered to my instructions and did no work without my prior sanction. He in no way misrepresented me or gave a wrong version of my instructions to any clients. He negotiated with the Bullion President to carry out an educational campaign throughout the country, and whatever negotiations he carried on subsequently with the Bullion President in this matter he did with my prior approval. As a matter of fact he did nothing on his own initiative.

On July 3, *i.e.*, the day before Shri Lalwaney was to appear before the Committee, Shri Mudgal gave him a document which contained points that Shri Lalwaney should make before the Committee in the course of his evidence. One of the points read as follows:

> Mr. Mudgal never came into the picture of securing or doing this work.

So the question of his asking or negotiating for *Rs.*20,000 or *Rs.*5,000 or any other amount did not arise.

Committee's Conclusions.

The Committee's conclusions are contained in paragraphs 55 to 60 inclusive of the Report, which read:

55. The Committee are satisfied that all the dealings between the Bombay Bullion Association and *H. G. Mudgal Publications* on and after March 9, 1951, were on the understanding that whatever might be the services that *H. G. Mudgal Publications* might render to them, Shri Mudgal would also render services to them in return for consideration paid to *H. G. Mudgal Publications*. Services to be rendered by Shri Mudgal were to include putting of Questions in Parliament, moving Amendments to the Forward Contracts (Regulation) Bill and arranging interviews with Ministers, etc.

56. The Committee consider that the fact that payments made were of comparatively small sums of *Rs.*1,000 each on 2 occasions to *H. G. Mudgal Publications* in respect of services rendered by them to the Bombay Bullion Association, makes no difference, as the anticipations of Shri Mudgal from this source were fairly high. The Committee are satisfied that he had entertained great expectations from this source as he has specifically asked his Assistant (Shri Lalwaney) to obtain from the Bombay Bullion Association at least *Rs.*7,000 for work done " for memorandum, arrangements for delegation and other Parliamentary contacts for the rest of the Session " in his letter to Shri Lalwaney of March 18, 1951.

57. The Committee are unable to accept Shri Mudgal's explanation for his letters to Shri Lalwaney dated March 18 and March 25, 1951, wherein he has specifically asked Shri Lalwaney to see the Bombay Bullion Association for payment, as he has produced no proof in support of his explanation, though it is highly doubtful whether any explanation at all would be acceptable in the face of the two letters, the genuineness of which he does not dispute.

58. The Committee are satisfied that Shri Mudgal in his communications with the Prime Minister, oral and written, and in his speech in Parliament had withheld material facts and had given out a story which has been proved to be at variance with the actual facts of his relationship with the Bombay Bullion Association. The Committee also believe that the true relationship between Shri Mudgal and Shri Lalwaney was as indicated in Shri Mudgal's certificate to Shri Lalwaney dated June 26, 1951.

59. Finally, the Committee take the view that even if the explanation of Shri Mudgal in giving the certificate to Shri Lalwaney on June 26, 1951, is to be accepted, Shri Mudgal's subsequent conduct in attempting to induce Shri Lalwaney to give evidence on the lines of the typewritten note given by him contrary to the true facts, is highly objectionable.

60. The Bombay Bullion Association and its President, in particular, have figured prominently in this inquiry. There is no doubt that the President and some of the Directors of the Bombay Bullion Association were under the belief that by their contact with *H. G. Mudgal Publications* they would gain their objectives better, through the activities of Shri Mudgal, Member of Parliament, and it is clear that the attempt to separate the two entities—Shri Mudgal, Member of Parliament, and *H. G. Mudgal Publications*—was an afterthought. The Committee, however, do not feel called upon to pronounce an opinion on the ethics of the action of the Bombay Bullion Association, and it would suffice to say that distinction sought to be imported between *H. G. Mudgal Publications* and Shri H. G. Mudgal has no foundation in fact.

The finding of the Committee is that Shri Mudgal's conduct is derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect from its members.

Evidence.

The Committee heard evidence from June 29 to July 7, discussed the draft Report on July 24 and 25 and submitted their final Report on the same day to the Honourable the Speaker. The Report was presented on August 11, the due date for its submission under the terms of the Motion. Copies had already been printed and they were made available to members and the public on the day the Report was presented.

The scheme of the Report is that it contains the main Report of the Committee, notes by individual members, 2 special Reports by the Chairman of the Committee, Minutes and Appendices containing the documents which were produced before the Committee and the verbatim record of evidence.

The main report is divided into 5 sections:

(i) Introduction and procedure;
(ii) Facts of the case as they stood at the time the Motion was adopted in Parliament;
(iii) Summary of the evidence;
(iv) Facts as discovered by the Committee;
(v) Conclusions of the Committee.

Notes by Certain Members of the Committee.

Four members of the Committee, namely, Shrimati Durgabai, Shri Kashinathrao, Vaidya Syed Nausherali and Professor K. T. Shah, have appended 3 notes to the Report. The first two are separate notes by Shrimati Durgabai and Syed Nausherali respectively, and the third one is a joint note by the other 2 members.

The note of Shrimati Durgabai deals with the general question of members of Parliament. She suggests the appointment of a Committee which should work in a detached manner and lay down general propositions by which the conduct of a member will be judged as and when cases arise. She says that it should be clearly understood that no set of rules can be exhaustive, as the circumstances of future cases cannot be envisaged and ultimately members have to depend upon their good sense and judgment. She gives a number of illustrations which bear on the conduct of members and the standard that Parliament expects from them. Some of the instances which she considers render the conduct of a member derogatory to the dignity of the House and are inconsistent with the standards which Parliament is entitled to expect from them are as follows:

(i) Information given to members in confidence or by virtue of their being members of Committees of Parliament should not be divulged to anyone nor used by them directly or indirectly in the profession in which they are engaged, such as in their capacity as editors or correspondents of newspapers or proprietors of business firms and so on.

(ii) A member should not try to secure business from Government for a firm, company or organization with which he is directly or indirectly concerned.

(iii) A member should not give certificates which are not based on facts.

(iv) A member should not make profit out of a Government residence allotted to him by sub-letting the premises.

(v) A member should not unduly influence the Government officials or the Ministers in a case in which he is interested financially either directly or indirectly.

(vi) A member should not receive hospitality of any kind for any work that he desires or proposes to do from a person or organization on whose behalf the work is to be done by him.

(vii) A member should not in his capacity as a lawyer or a legal adviser or a counsel or a solicitor appear before a Minister or an executive officer exercising quasi-judicial powers.

(viii) A member should not proceed to take action on behalf of his constituents on some insufficient and baseless facts.

(ix) A member should not permit himself to be used as a ready supporter of anybody's grievances or complaints.

(x) A member should not endorse incorrect certificates on bills claiming amounts due to him.

(xi) A member should not elicit information from Government in an unauthorized manner by inducing a subordinate to give information which in the course of his normal functions he should not do, nor encourage any such person to speak to him against his senior officials on matters of public importance and policy.

(xii) A member should not write recommendatory letters or speak to Government officials for employment or business contacts for any of his relations or other persons in whom he is directly or indirectly interested.

The other 2 notes also deal with the general question of the standards of members. They also have laid stress that a high standard should be expected from the members of Parliament, who should not utilize their position for the furtherance of their personal needs.

Special Reports from the Committee.

One of the special Reports deals with an incident which occurred during the course of the evidence in which Shri Tiwari, the President of the Bombay Bullion Association, was found reading his evidence to other witnesses and attempting to give them the lines on which they should give their evidence. The Committee examined him on the spot, but Shri Tiwari denied both the charges. Later on he caused 2 affidavits to be submitted to the Committee. The Committee did not take further action in the matter, but reported it to the Speaker for such action as he might think fit.

The Second Special Report deals with the letter of Shri Mudgal which he wrote to the Prime Minister after the Committee had concluded the evidence. This letter of Shri Mudgal's was placed before the Committee by the Prime Minister. The Committee came to the conclusion that it contained facts contrary to those which had been placed before the Committee during the enquiry and therefore they did not propose to take any action thereon. The letter also contained a statement which was found to be totally untrue.

Motion in House.

On September 24, 1951, the Prime Minister moved the following Motion in the House:

That this House, having considered the Report of the Committee appointed on June 8, 1951, to investigate into the conduct of Shri H. G. Mudgal, Member of Parliament, accepts the finding of the Committee that the conduct of Shri Mudgal is derogatory to the dignity of the House and inconsistent with the standard which Parliament is entitled to expect from its Members and resolves that Shri Mudgal be expelled from the House.

While moving this Motion, the Prime Minister said that in the month of June he had brought before the House a Motion in regard to certain allegations about the conduct of a member. "Such a matter is always distasteful", he said,

but, when certain information was brought before me as Prime Minister, I gave careful thought to it and I proceeded to draw the attention of the hon. Speaker to that information. On his advice, I moved the House in this matter so that a Committee of Inquiry might be appointed. It is obvious that the House could not possibly go into any details of inquiry, and it was necessary that no step should be taken without an inquiry, without the fullest opportunity being given to the hon. member to explain his viewpoint or his activities. So the normal course was taken of appointing such a Committee of Inquiry if some kind of a *prima facie* case was established.

Paying a tribute to the Committee, the Prime Minister said:

This Committee has laboured during these months, and, as hon. members are aware, has produced a report which itself shows how much trouble they have taken over this matter, and how carefully they have gone into every allegation, the evidence they have taken and the opportunities given to the hon. member concerned, namely, Mr. Mudgal. The report of the Committee is unanimous and may I in this connection express my appreciation of the labours of the Committee on this matter.

The Prime Minister further continued:

I do not propose to go deeply into the evidence in this case. Indeed, I do not think it is normally possible for this House in a sense to convert itself into a court and consider in details the evidence in the case and then come to a decision. We have now the report of the Committee before us and the conclusions that the Committee has arrived at are entirely unfavourable to the member of the House whose conduct has been inquired into.

The Prime Minister then read out certain extracts from the Report of the Committee bearing on the facts of the case on which the conclusions of the Committee were based. With reference to the separate notes by some members of the Committee appended to the report, the Prime Minister said:

These notes really refer not to this particular case so much but rather suggest the ground for Parliament for making rules or conventions for future guidance. Their suggestion is that a Committee might be appointed by Parliament to go into this question. I entirely agree that we should have certain general rules for the guidance of members of Parliament. I am not quite clear as to how far it is possible or desirable to be exceedingly specific

in regard to it. Anyhow that is a matter for the consideration of Parliament or the Committee to be appointed by Parliament. But it is most important and it should be clearly understood that Parliament is bent on maintaining the highest standards for its members.

The Prime Minister further stated:

From the facts that this report contains, I have been surprised at the extent, shall I say, of misrepresentation to me when I first inquired into the matter and the facts now show a conduct which I consider highly derogatory and highly objectionable.

The Prime Minister then briefly referred to the Constitutional position in the following words:

In our Constitution no particular course is laid down in regard to such matters. If we refer to Article 105 it refers us back to the practice in the British House of Commons. It says:

> 105 (3). In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the Committees of each House shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and Committees, at the commencement of this Constitution.

Apart from that, even if the Constitution had made no reference to this, this House as a sovereign Parliament must have inherently the right to deal with its own problems as it chooses and I cannot imagine anybody doubting that fact. This particular Article throws you back for guidance to the practice in the British House of Commons. There is no doubt as to what the practice in the United Kingdom has been or is. So there is no doubt that this House is inherently entitled and also if reference be made to the terms of Article 105 to take such steps according to the British practice and expel such a member from the House. The question arises whether in the present case this should be done or something else. It is perfectly clear that this case is not even a case which might be called a marginal case, where people may have two opinions about it, where one may have doubts if a certain course suggested is much too severe. The case, if I may say so, is as bad as it could well be. If we consider even such a case as a marginal case or as one where perhaps a certain amount of laxity might be shown, I think it will be unfortunate from a variety of points of view, more especially because, this being the first case of its kind coming up before the House, if the House does not express its will in such matters in clear, unambiguous and forceful terms, then doubts may very well arise in the public mind as to whether the House is very definite about such matters or not. Therefore it has become a duty for us and an obligation to be clear, precise and definite. The facts are clear and precise and decision should also be clear and precise and unambiguous. The decision of the House should be, after accepting the finding of this report, to resolve that the member should be expelled from the House.

After the Prime Minister made the speech and moved the Motion, Shri Mudgal was called upon to speak: He said:

I do not mind facing this Motion knowing that I have not done what the Report of the Committee purports I have done. The powerful will of the hon. Leader of the House is backing the Committee's report. Under these circumstances, I would like the members of the House to give a closer attention to what I am going to say.

The member charged the Committee that if they had gathered all the relevant facts, interpreted them with a judicial mind without a predetermined prejudice and arrived at the truth, he should have been the first man to bow down to its verdict. In that case, he said, he would have unhesitatingly sacrificed himself to maintain the dignity of Parliament and thus strengthen this great Republic which was dearer to him than his own future. He again and again appealed to the members to listen to him with an open mind. In a long speech lasting for over 90 minutes, he analysed the evidence, and made improper allegations against the Committee, the Chairman and the members of the House. Repeatedly he was called to order by the Chair for irrelevant, undignified or unparliamentary statements. The main trend of his argument was that he was sorry for the letters of March 18 and 25, 1951, and the certificate of June 26, 1951 (referred to in the report of the Committee and on which mainly the conclusions of the Committee were based) which, he said, he had written in innocence, but the Committee was biased and it seemed to him that everybody was working against him.

After he had concluded his speech, he was asked by the Chair to withdraw from the House according to the normal parliamentary practice, before the Motion could be debated and decided upon. The hon. member said that before he withdrew he wanted a few minutes, which were granted.

During these few minutes, the hon. member wrote out his resignation on a sheet of paper and then, walking up to the Deputy Speaker, who was in the Chair, handed it over to him. Immediately thereafter he withdrew from the House.

Shri Mudgal's resignation, which was worded as follows, was read out to the House by the Deputy Speaker:

September 24, 1951.

To the Hon. Speaker,
Parliament House, New Delhi.

As I feel that members may not have freedom to vote, I beg to submit my resignation of my membership of the present House.

Questions arose in the House whether the letter of resignation became effective the moment the member handed it over to the Deputy Speaker, whether it was properly worded and should be accepted by the House, and finally, whether his resignation brought to an end the proceedings which were going on, on the Motion moved by the Prime Minister. A debate followed on all these points in which several members took part. As the debate was not concluded on September 24, when the House rose for the day, it was resumed on September 25. Several members, including the Prime Minister, the Minister for Home Affairs and the Law Minister, took part in the discussion. It was the unanimous opinion of the House that the resignation was effective the moment it was signed by the member and handed over to the Speaker or the Deputy Speaker.

As the Constitution or the Rules of Procedure did not lay down any particular form in which a letter of resignation should be worded, the question of its acceptance or the form did not arise. It was also held that the fact that a member had resigned his membership of Parliament did not bring the existing proceedings to a stop. Regarding this matter, it was held that the House had not lost its jurisdiction over the member although he had ceased to be a member of the House consequent on the resignation of his membership of Parliament, as indeed the authority of Parliament was exercisable over both the members of the House as well as the members of the public. The House deprecated the attempt of the member to circumvent the effect of the Motion that was under discussion in the House by resorting to the device of resigning his membership of Parliament.

Amendment.

After these points of constitutional issue and procedure were settled, the House accepted the following amendment moved by the Prime Minister to the original Motion:

That for the words "and resolves that Shri Mudgal be expelled from the House", occurring at the end of the Resolution, the following be substituted, namely:

"and resolves that Shri Mudgal deserved expulsion from the House, and further that the terms of the resignation letter he has given to the Deputy Speaker at the conclusion of his statement constitute a conempt for this House which only aggravates his offence."

The Resolution.

The Chair then put the following Motion as amended before the House which was unanimously adopted.

That this House, having considered the Report of the Committee appointed on June 8, 1951, to investigate into the conduct of Shri H. G. Mudgal, Member of Parliament, accepts the finding of the Committee that the conduct of Shri Mudgal is derogatory to the dignity of the House and inconsistent with the standard which Parliament is entitled to expect from its Members, and resolves that Shri Mudgal deserved expulsion from the House and further that the terms of the resignation letter he has given to the Deputy Speaker at the conclusion of his statement constitute a contempt of this House which only aggravates his offence.

XX. THE GAMBIA: NEW LEGISLATIVE COUNCIL, 1951[1]

BY THE EDITOR

THE Gambia consists of the Colony, which covers about 69 square miles, and the Protectorate, the area of which is about 3,964 square miles.

[1] *See also* JOURNAL, Vol. XIII. 96.

Statutory Instrument No. 1169 brought into being The Gambia (Legislative Council) (Amendment) Order in Council 1951, which is to be read with the Principal Order; and The Gambia (Legislative Council) Orders in Council 1946[1] to 1948 now all cited together as The Gambia (Legislative Council) Orders in Council 1946 to 1951.

These Orders are also to be read with British Settlements Acts, 1887 and 1945,[2] and the Foreign Jurisdiction Act, 1890,[3] under which Her Majesty the Queen acts, with the advice of Her Privy Council, by virtue of the powers vested in Her under such Acts.

Reading the Order in Council of 1946 as amended by that of 1947 and 1948 and now also with that of 1951, the constitutional position of the new Legislative Council in regard to its members, powers and procedure is as follows:

The Governor is also Governor and Commander-in-Chief of the Gambia. He summons,[4] prorogues[5] and may at any time dissolve the Legislative Council.[6]

Executive Council.—The membership of the Executive Council, in addition to the Colonial Secretary, the Attorney-General and the Financial Secretary, who are all Officials, is that all 3 Elected Members of the Legislative Council are now members of the Executive Council, the 2 without Portfolio receiving remuneration as such.

Legislative Council.—This Council will now consist of: the Governor; a Vice-President; 3 *ex officio* members, namely, the Colonial Secretary, the Attorney-General and the Financial Secretary; 4 Nominated Official M.L.C.s; 5 Unofficial Nominated Members; 4 representing the Protectorate area of The Gambia and one the commercial community; and 3 elected M.L.C.s, 2 representing Bathurst and one Kombo St. Mary. Both Nominated and elected M.L.C.s are eligible for re-appointment or re-election as case may be.[7] The Instruments fix no exact number of Official and Unofficial M.L.C.s.

It is proposed that from among the 3 Elected M.L.C.s, 2 should be chosen to become members of the Government without Portfolio. These 2 members will be closely associated with the work and policy of certain specific Government Departments and their advice will be sought on these matters at every stage. All 3 Elected Members will be appointed to sit on the Executive Council.

The Governor is to report every appointment of a Nominated M.L.C. to the Secretary of State and they hold their seats during the Queen's Pleasure. The Governor may suspend any such M.L.C., or when he considers it desirable, appoint a temporary M.L.C. without voting powers. He may also make temporary appointments in case of vacancies among the *ex officio* or Nominated M.L.C.s.[8]

[1] S.R. & O. 1946 (No. 2984), I, p. 629; *ib.* 1947, No. 2590, I, p. 804; *ib.* 1948, No. 2080, I, p. 1339; *ib.* 1948.
[2] 50 & 51 Vict. c. 54 & 59 and 9 & 10 Geo. VI. c. 7. [3] 53 & 54 Vict. c. 37.
[4] 1946 Order, S. 29. [5] *Ib.* 31. [6] 1951 Order, S. 20. [7] *Ib.* Ss. 3, 5, 7.
[8] 1948 Order, Ss. 8, 9, 19.

Qualifications and Disqualifications of M.L.C.s.—The qualifications are that they shall not be younger than 25 years; British subjects or British protected persons and if Elected Members also registered voters; and ordinarily resident in the Colony for the past 12 months.[1]

Disqualifications are: (1) Foreign allegiance; (2) undischarged bankrupt; (3) stated imprisonment; (4) for Nominated Unofficial or Elected Members, office of profit; (5) lunacy; (6) party to Government Contract; (7) electoral offence; (8) barred legal or medical practitioner; and (9) relief from Government funds.[2]

Seats are vacated by death, absence of more than 12 months from The Gambia or from sittings of the Council, without leave of the Governor; allegiance to a Foreign State, bankruptcy in any part of the Realm; imprisonment for 6 months or more; Government Contracts (*see below*); lunacy; resignation; Nominated Official M.L.C.s ceasing to hold offices of profit under the Crown or a Nominated Unofficial M.L.C. or Elected M.L.C.s appointed to such office; or public relief (*as above*) or, Nominated M.L.C.s declared by the Governor as incapable of discharging their functions as M.L.C.s.

Vacancies among Unofficial M.L.C.s are reported to the Governor in writing by the Clerk of the Council[3] are filled by the Governor.

The fine for any unqualified Nominated or Elected M.L.C. sitting or voting therein is £20 *p.d.* (recoverable by action in the Supreme Court at the suit of the Attorney-General)[4] for every such day on which he so sits and votes.

Decisions of questions in regard to Nominated M.L.C.s are vested in the Governor in Council[5] and those in regard to Elected M.L.C.s by the Supreme Court on petition by the Attorney-General. The decision of such Court is final and is reported to the Governor.

Offices of Profit under the Crown.—Offices of emolument under the Crown do not include a Chief, member of any Native Authority or Native Tribunal, or a person in receipt of a pension from the Crown, or an office declared by law not to be such an office.[6]

Government Contracts.—Ss. 12 and 9 of the Orders of 1948 and 1951 make the same provision in regard to this subject as under the Jamaica Constitution (*see* JOURNAL, Vol. XIII, 203).

Franchise.—This is enjoyed by any British subject or British-protected person, of not less than 25 years of age, of 12 months' residence; not owing foreign allegiance and who has during the last 10 years not served more than 6 months' imprisonment in the Queen's Realm without a free pardon. Insanity or being the agent, clerk, manager, etc., of a candidate is a disqualification.[7]

Legislation.—The power to make laws for the peace, order and

[1] 1951 Order, Ss. 8, 16.
[2] 1948 and 1951 Orders, Ss. 11, 12 and 8 respectively. [3] 1948 and 1951 Orders, Ss. 8, 13 and 18 respectively. [4] 1948 Order, S. 33. [5] *Ib.* S. 14.
[6] *Ib.* S. 1, Reg. 69. [7] Reg. 8, Form 2, under S. 20 of 1951 Order.

good government of The Gambia is vested in the Governor with the advice and consent of the Legislative Council. The Governor may reserve Bills for the signification of the Crown.

Governor's Reserved Power.—S. 24 of the Order makes the same provision as under the Gold Coast Constitution (*see* JOURNAL, Vol. XV, 243).

Presiding Member.—The Governor may, with the approval of the Secretary of State, appoint a person to be Vice-President of the Council who shall hold office during "Our" pleasure.[1]

The Governor, if present, or in his absence the Vice-President or in the absence of both, such M.L.C. as the Governor may appoint, or failing that, the M.L.C. next in order of precedence, presides at meetings of the Council.[2]

Neither the Governor nor the Vice-President has a deliberative vote, but should the voting be equal the Governor or Vice-President has a casting vote. Should both be absent, however, the M.L.C. has both a deliberative and casting vote.[3]

Procedure in the Council.—Provision is made for Standing Orders, quorum, finance, etc.[4]

XXI. THE GOLD COAST CONSTITUTION, 1950[5]

BY THE EDITOR

THE following is a brief outline of the new Constitution of the Gold Coast in so far as it relates particularly to the Governor, the Legislature, its members and the legislative power.

The Gold Coast (Constitution Order in Council, 1950).[6]

On December 20, 1950, the Gold Coast (Constitution) Order in Council 1950 was made.

An outline of "the Coussey Report" was given in our last issue, but the Order which is the subject of this Article is more conservative in its provisions, and, while still giving very wide control, is only distinguishable, in its nature of local control, by certain powers vested in the Governor and the inclusion of the 3 Crown officials, as *ex officio* members in both the Executive Council and the Legislative Assembly.

Among other definitions the interpretation section (S. 1 (3) and (5)) provides as follows:

Commonwealth & Empire.—S. 1 (3) of the Order makes similar provision as under the Trinidad & Tobago Constitution (*see* JOURNAL, Vol. XIX, 106).

[1] 1951 Order, S. 4A. [2] *Ib.* S. 16. [3] *Ib.* S. 18. [4] 1948 Order, Ss. 30 & 32; 1948 and 1951 Orders, Ss. 23 and 17 respectively; *ib.* Ss. 25 and 19. [5] *See* JOURNAL, Vols. XI-XII. 79; XIII. 96; XIV. 92; XV. 237; XVIII. 120; XIX. 98. [6] S.I. 1950, No. 2094.

Nationality.—The same provision is made by S. 1 (5) as under the North Borneo Constitution (*see* JOURNAL, Vol. XIX, 102).

Office of Profit.—S. 1 of the Order defines "public office" as any office of emolument in the public service, *i.e.* the service of the Crown in respect of the Government of the Gold Coast, but Section 1 (4) reads:

(4) (*a*)—For the purposes of this Order, a person shall not be considered to hold a public office by reason only that he is in receipt of a pension or other like allowance in respect of service in any such office; and if it shall be declared by any law in force in the Gold Coast that an office shall not be a public office for all or any of the purposes of this Order, this Order shall have effect accordingly as if such law were enacted herein.

(*b*)—For the purposes of this Order a person shall not be considered to be a public officer or otherwise to hold office of emolument under the Crown by reason of the fact that he is in receipt of a salary or other emoluments or any allowance in respect of his tenure of the office of Speaker, Deputy Speaker, Minister, Ministerial Secretary or Member of the Assembly.

Governor.

The customary provisions are made in regard to oath of office, Public Seal, Prerogative of Mercy, etc., by Governor's Letters Patent of December 19, 1950; these revoke those of 1946 and 1949.

Under the Order, the Governor, save as is provided hereunder, consults with the Executive Council and acts in accordance with their advice.[1]

The Governor is, however, not required to consult such Council in the exercise of his duties in regard to the power of pardon in capital and other cases: appointment of Deputy-Governor; disposal of lands; appointment of officers or discipline.[2]

(For further provisions in which the Governor is not required to consult or follow the advice of the Executive Council *see* under the Trinidad & Tobago Order-in-Council *vide* JOURNAL, Vol. XIX, 108.)

Governor's Reserved Power.—Section 68 of the Order makes the same provision in regard to this subject as under the Jamaica Constitution (*see* JOURNAL, Vol. XIII, 202) except in respect of S. 58 (2) (*b*) which reads:

(2) (*b*) if, when the question whether the declaration should be made is submitted to it as aforesaid, the Executive Council shall not within such time as the Governor may think reasonable and expedient resolve that the declaration be made, then—

(i) the Governor may submit the said question to a Secretary of State and may make the declaration if, upon the question being so submitted to him, a Secretary of State authorizes the Governor to make the declaration; or

(ii) the Governor may make the declaration without submitting the said question to a Secretary of State, if in the Governor's opinion urgent necessity requires that the declaration be made without obtaining the authority of a Secretary of State; in which case he shall, at the time of

[1] *Ib*. S. 6. [2] R.I., Dec. 26, 1950, Cl. 4.

making the declaration, certify in writing that urgent necessity requires that the declaration be made without obtaining such authority.

Executive Council.

This Council is the principal instrument of policy[1] in and for the Gold Coast, which, as defined in the Order, means: the Gold Coast Colony, Ashanti and the Northern Territories, as well as Togoland under the United Kingdom Trusteeship, and consists of: the Governor, as President, 3 *ex officio* members, the Chief Secretary, the Attorney-General and the Financial Secretary, all appointed by the Crown, as well as "Representative Members", being M.L.A.s not to number less than 8 at any one time, as may be appointed under the Order.[2]

Under S. 7 of S.I. 1950, No. 2095, the Executive Council for the Gold Coast and Ashanti is also the Executive Council for the Northern Territories.

Section 8 provides for the appointment of a deputy during the Governor's absence and S. 9 deals with tenure of office. A Representative Member vacates his seat in the Executive Council:

(*a*) if he shall cease to be a Member of the Assembly; Provided that, if a Member of the Executive Council shall cease to be a Member of the Assembly by reason of a dissolution thereof, he shall not on that account vacate his seat in the Executive Council until such time as the Assembly shall, after such dissolution, have resolved that not less than four persons shall be appointed to be Members of the Executive Council in pursuance of paragraph (ii) of section 8 of this Order; or

(*b*) if he shall be absent from the Gold Coast without written permission given by the Governor acting in his discretion.

A Representative Member resigns his seat on the Executive Council to the Governor but is eligible for re-appointment. The Governor may, by Instrument, declare a Representative Member of the Executive Council to be, by reason of illness, temporarily incapable of discharging his functions as such; whereupon he may neither sit nor vote thereon until declared again capable of discharging such functions.[3]

All decisions of questions as to membership of the Executive Council are decided by the Governor,[4] who may, in cases of vacancy, appoint Temporary Members.[5]

Provisions are also made as to the official Oath to be taken by M.E.C.s.[6]

Section 14 reads:

Method of appointment and removal of Representative and Temporary Members of Executive Council. 14 (i) when, under paragraph (ii) of section 8 of this Order, the Assembly shall consider and resolve whether the appointment of any person to be a Member of the Executive Council shall be approved; or

[1] S.I. 1950, No. 2094, S. 5. [2] *Ib.* S. 4. [3] *Ib.* S. 10.
[4] *Ib.* S. 11. [5] *Ib.* S. 13. [6] *Ib.* S. 12.

(ii) when, under subsection (1) or section 9 of this Order, the Assembly shall resolve that the Governor shall be requested to revoke the appointment of a Representative Member of the Executive Council; or

(iii) when, under subsection (3) of section 9 of this Order, the Executive Council shall resolve that the appointment of a Representative Member of the Executive Council shall be revoked; or

(iv) when, under paragraph (ii) of subsection (3) of section 13 of this Order, the Executive Council shall consider and resolve whether the appointment of any person to be a Temporary Member of the Executive Council shall be approved; or

(v) when, under subsection (5) of section 13 of this Order, the appointment of a Temporary Member made under subsection (3) of section 13 of this Order is revoked;

the votes of the Members of the Assembly, or of the Executive Council, as the case may be, shall be given by ballot in such manner as not to disclose how any particular Member shall have voted.

The Leader of Government Business in the Legislative Assembly.—The holder of this office (which was subsequently described as "Prime Minister"),[1] constituted under S. 15, is elected by a majority of members of the Executive Council from among their number, with such powers and duties as the Governor may determine.[2]

Presiding in Executive Council.—The Governor, so far as possible, presides at all meetings thereof or in his absence the Chief Secretary, or failing him, such M.E.C. as the Governor may appoint.[3]

The Executive Council is summoned by the Governor, but he must summon such Council with the request, in writing, of at least 8 M.E.C.s. The Quorum is 5. Questions are decided by majority, the Governor having, in his discretion, a casting vote only. Any person presiding in the absence of the Governor has an original vote and such member may, in case of an equality of votes, also have a casting vote. Precedence of M.E.C.s is laid down in S. 16.

Committees.—Committees of the Executive Council may be established under R.I. to exercise such functions as may be prescribed.[4]

Departments.—The Governor, acting in his discretion, in writing, may charge any M.E.C. with the responsibility for any department or subject and revoke or vary such directions.[5]

Ministers.—M.E.C.s are styled Ministers with, or without Portfolio, as the case may be.[6] The Governor has power temporarily to assign departments.[7] The annual salaries of Ministers (which are in lieu of salary as M.L.A.) are as follows: Chief Secretary and Leader of Government Business, £2,750; other Ministers, £2,500; Ministerial Secretaries, £1,200.

Under Ministers.—Ministerial Secretaries, not exceeding the number of Ministers and holding office during the Governor's pleasure, may be appointed by him from among the M.L.A.s and such Secretaries may at any time resign office by writing under their hand ad-

[1] *The Times*, March 22, 1952.
[2] *Ib.* S. 17, 1920.
[3] *Ib.* S. 23.
[4] S.I. 1950, No. 2094, S. 15.
[4] *Ib.* S. 21.
[5] *Ib.* S. 22.
[7] *Ib.* Ss. 24, 28.

dressed to the Governor. Temporary appointments may be made by the Governor in cases of vacancy. All such Secretaries are required to take the official Oath.[1]

Permanent Secretaries.—The Governor, acting in his discretion, may appoint a public officer as permanent head of each Ministerial division.[2]

Governor's Secretary and Secretary to Executive Council.—This officer is appointed by the Governor and acts under his direction.

The Governor may grant leave of absence to any Minister or Ministerial Secretary.[3]

Legislative Assembly.

This unicameral Legislature consists of the Speaker; the 3 same *ex officio* members as in the Executive Council; 6 Special Members; and 75 Elected M.L.A.s.[4]

In case of vacancies among the *ex officio* M.L.A.s, temporary appointments may be made by the Governor.[5]

Special M.L.A.s.—These consist of 3 "Special Members for Commerce" chosen by the members of the "specified Chambers of Commerce" in manner directed in writing by the Governor, and 3 "Special Members for Mines" chosen by the members of the Gold Coast Chamber of Mines directed in the same manner.[6]

Elected M.L.A.s.—These consist of:

A.—FOR THE COLONY.

Thirty-seven M.L.A.s as follows:

(i) Twelve Territorial Members of whom 11 are elected to represent groups of constituencies, by the Joint Provincial Council, which is comprised of the Paramount Chiefs of the Colony (or their accredited representatives) excluding any such Chief not so recognized; and one member chosen by the Native Authority for every area within the Colony which does not include a State or part thereof, a State being the territorial area of which a Paramount Chief is elected under customary law: provided that a paramount Chief who is a member of the Joint Provincial Council may be represented at all or any of the meetings thereof by a person duly accredited for that purpose to the satisfaction of the President of such Council. Should, however, a member of a Native Authority chosen to such Council, cease to be a member thereof or should such Authority cease to be recognized by the Governor, in his discretion, that person ceases to be a member of such Council;[7]

(ii) One member elected by the Southern Togoland Council composed of representatives of Native Authorities therein chosen in accordance with the Native Authority (Southern Section of Togoland under United Kingdom Trusteeship) Ordinance 1949;[8]

[1] *Ib.* Ss. 25, 26. [2] *Ib.* S. 27. [3] *Ib.* Ss. 29, 30. [4] *Ib.* Ss. 33, 38.
[5] *Ib.* S. 24. [6] *Ib.* S. 39. [7] *Ib.* S. 40, Sch. 11.
[8] *Ib.* S. 40 (1) (i), Sch. 11, Parts I and II.

(iii) 21 Rural Members; and
(iv) 4 Municipal Members.

B.—FOR ASHANTI.

Nineteen members, consisting of:

(i) Six Territorial Members elected by the Asanteman Council, which consists of the Asantehene and the Head Chiefs of such Divisions of Ashanti and such Kumasi clans as specified by the Governor, in his discretion, in any Order made by him under the Native Authority (Ashanti) Ordinance, together with such other persons as the Asantehene, with the approval of the Governor, in his discretion, may from time to time appoint as members of the Council.
(ii) 12 Rural Members; and
(iii) 1 Municipal Member.[1]

C.—FOR THE NORTHERN TERRITORIES.

Nineteen members elected by "the Electoral College of the Northern Territories of the Gold Coast" consisting of: members for the time being of the Northern Territories Council composed of representatives of the Native Authorities chosen under the Native Authorities (Northern Territories) Ordinance.[2]

Subject to the provisions of the Order, the Rural and Municipal members above mentioned are elected under S. 49 of the Order or under S. 3 of the Gold Coast (Constitution) (Electoral Provisions) Order in Council, 1950.[3]

Qualifications and Disqualifications for Membership.—Qualifications are: to be eligible for membership under A, B and C a candidate must be: a Native of the particular territory, both of whose parents were born therein and are or were members of a tribe or tribes indigenous to Africa; allegiance under Native customary law to the particular Stool to which he is subject (in the case of Ashanti, to the Golden Stool) and which candidate is otherwise, under Part IV of the order, a British Subject or a British Protected person, of not less than 25 years of age; and able to speak and (unless incapacitated by blindness or other physical cause) read the English language with a degree of proficiency to enable him to take an active part in the proceedings of the Assembly and not disqualified as under:[4]

Disqualifications are: in addition to Nos. (1) to (8) (*see* Gambia, Article XX hereof); office of Speaker; election official; if an Elected Member, other than a Territorial or Northern Territory Member, acting as an election official; or under sentence of death.[5]

Under S. 72, any chosen or elected M.L.A. sitting or voting when disqualified is subject to a fine of £20 for every day on which he so votes, such penalty being recoverable by action in the Supreme Court at the suit of the Attorney-General.

[1] *Ib.* S. 40 (1) (ii), Sch. 11, Part III. [2] *Ib.* S. 40 (1) (iii), Sch. 11, Part IV.
[3] *Ib.* S. 40 (2). [4] *Ib.* S. 42. [5] *Ib.* S. 43.

Decisions of questions as to *ex officio* or Special Membership of the Assembly are decided by the Governor in his discretion and all questions in respect of elected M.L.A.s are determined by the Supreme Court.[1]

Vacation of seat.—The seat of either a Special or Elected M.L.A. becomes vacant: on death; absence from 2 consecutive meetings of the Assembly without leave from the Speaker, before the termination of either of such meetings; if a Special Member he is nominated as a candidate for an Elected M.L.A. and *vice versa*; foreign allegiance; appointed to public office; if elected Speaker; party to a Government Contract (*see below*); bankruptcy; imprisonment; subject to any of the disqualifications in S. 43 (*f*), (*g*), (*h*) of the Order; or if an Elected M.L.A. other than a Territorial member, or one representing the Northern Territories, suffers imprisonment.[2]

Electoral.—Section 49 of the Order provides for the laws as to Elections and Schedule II gives the States comprising the Central, Eastern Akan, Ewe, Ga-Adangme and Western electoral groups represented in the Assembly by the Territorial Members elected by the Joint Provincial Council, which consists of the recognized Paramount Chiefs and one member chosen by the Native Authority for every area within the Colony.[3]

The Territorial M.L.A.s for Southern Togoland are elected by the Southern Togoland Council, which is composed of the representatives of the Native Authorities of such Territory.[4]

The Territorial M.L.A.s for Ashanti are elected by the Asanteman Council, which is composed of the Asantehene and the Head Chiefs of Ashanti and of the Kumasi clans.[5]

The M.L.A.s for the Northern Territories are elected by the Electoral College thereof, made up of the chosen representatives of the Native Authorities and the members appointed under S. 49 of the Order or under S. 3 of the Gold Coast (Constitution) (Electoral Provisions) Order in Council 1950.[6]

In each case, the M.L.A. must be a native of his group or Territory, owe allegiance to his particular Stool or be a member of the Electoral College, as the case may be, and be qualified under Part IV of the Order.

The details in connection with these elections are laid down in the Electoral (Legislative Assembly) Regulations, 1951, under the Elections (Legislative Assembly) Ordinance (No. 1 of 1951) dealing with the M.L.A.s elected by the Joint Provincial Council, the Territorial M.L.A.s elected by the Southern Togoland Council and the Ashanti and Rural M.L.A.s, both in regard to the Primary and Secondary Elections.

The Regulations also deal with the election of the Municipal mem-

[1] *Ib.* S. 45. [2] *Ib.* S. 44. [3] *Ib.* Sch. 11, Part I.
[4] *Ib.* Part II. [5] *Ib.* Part III. [6] *Ib.* Part IV.

bers and those elected for the Northern Territories, as well as with election offences and petitions.

The ballot is secret and symbols are used both on the ballot papers and ballot boxes, and in order to avoid plural voting the right thumb of the voter is inked with an indelible purplish-blue stain on handing over the ballot paper. The elector's right thumb is then scrutinized as each one applies for his or her paper.

Office of Profit under the Crown (*see above*).

Government Contracts.—It is a disqualification for either a Special or an Elected M.L.A. to be a party to, or a partner in a firm, or a director or manager of a Company which is a party to any contract with the Government of the Gold Coast for or on account of the public service, and has not within one month before the day of election, published in the English language in the Gazette a notice, setting out the nature of such contract, and his interest, or the interest of any firm or company therein.[1]

The seat of an Elected M.L.A. becomes vacant also upon his becoming party to a Government Contract as above:

> Provided that, if in the circumstances it shall appear to them to be just so to do, the Assembly may exempt any Elected Member from vacating his seat under the provisions of this paragraph, if such Member shall, before becoming a party to such contract as aforesaid or before, or as soon as practicable after, becoming otherwise interested in such contract (whether as partner in a firm or as director or manager of a company), disclose to the Speaker the nature of such contract and his interest or the interest of any such firm or company therein; or[2]

An M.L.A., other than an *ex officio* member, resigns by writing under his hand, addressed to Mr. Speaker.[3]

Speakership.—The Speaker, who is elected by the Legislative Assembly, may not either be the holder of any public office, or an M.E.C., and if an M.L.A., his seat becomes vacant upon election as Speaker. The election of the Speaker takes place before the despatch of any other business at the first sitting of the first Assembly and at its first sitting after every dissolution. He resigns office, by writing, under his hand, to the Governor, and vacates office on dissolution of the Assembly. In case of casual vacancy, another person is elected at the first following sitting. A Speaker is eligible for re-election.[4]

Provision is made for an M.L.A. who is not an M.E.C. to be elected Deputy Speaker. In the absence of the Speaker or in case of vacancy in the office, the Deputy addresses his resignation to the Clerk of the Assembly.[5]

The election of both the Speaker and his Deputy is by secret ballot.[6] The emoluments of these 2 Officers, which are a charge on the revenues of the Gold Coast and paid by the Accountant-General upon Governor's warrant, are £1,500 and £750 *p.a.*, respectively.[7]

[1] *Ib.* S. 43 (*d*). [2] *Ib.* (*g*). [3] *Ib.* S. 44. [4] *Ib.* S. 34.
[5] *Ib.* S. 35. [6] *Ib.* S. 36. [7] *Ib.* S. 37.

Vacancies in the Assembly are reported by the Speaker or his Deputy to the Governor,[1] whereupon steps are taken to fill the vacancy.[2]

Procedure.

The Speaker, or in his absence the Deputy Speaker, or in the absence of both, an M.L.A. (not being an M.E.C.) elected by the Assembly for that sitting, presides over the Assembly.[3]

The quorum is 25, excluding the Presiding Member.[4]

Questions are decided upon a majority of votes of the members present, but should the voting be equal the Motion is lost. The Speaker has neither an original nor a casting vote, but any other person presiding has an original though not a casting vote.

Except in Select Committee, of which Special M.L.A.s are members, not more than 2 Special Members may vote on any question in the Assembly, and the members of the specified Chamber of Commerce and of the Gold Coast Chamber of Mines must nominate for each Session of the Assembly one of the Special M.L.A.s for each such Chamber to vote upon all questions during that Session. In event of their absence, the President of one of such Chambers as the Governor, by writing under his hand, selects shall, after consultation with the President of the other specified Chambers of Commerce, appoint another of the Special M.L.A.s for Commerce to vote during such absence.

Should any Special Member for Mines be absent, then the President of that Chamber must nominate another of such Special Members to vote during such absence. All these nominations must be notified to the Clerk of the Assembly by the President of the Chamber of Commerce selected by the Governor, or the President of the Chamber of Mines, as the case may be.[5]

Under S. 52, the first Standing Orders are made by the Governor, in his discretion, but may be amended by the Assembly. Thereafter, subject to the provisions of the Order and of any R.I., the Assembly may make such Standing Orders as it may deem fit.[6]

In regard to the introduction of Bills into the Assembly, S. 57 of the Order provides that any Member may introduce any Bill, or propose any Motion for debate in, or may present any petition to, the Assembly, but the Assembly may not proceed upon any matter dealing with public money or with the salary, etc., of any public officer without the recommendation or the sanction of the Governor.

Sub-section (4) of S. 57 provides that:

(4) Except with the recommendation or consent of the Governor, acting in his discretion, signified thereto, the Assembly shall not proceed upon any Bill or Motion which, in the opinion of the Speaker or Attorney-General, would provide for the final determination, otherwise than by the Governor, acting in his discretion, of questions relating to any of the following matters:—

[1] *Ib.* S. 47. [2] *Ib.* S. 48. [3] *Ib.* S. 53. [4] *Ib.* S. 55.
[5] *Ib.* S. 56. [6] *Ib.* S. 52.

(*a*) the election, installation, deposition or abdication of any Chief, or the right of any person to take part in any such election, installation or deposition;

(*b*) the recovery or delivery of Stool property in connection with any such election, installation, deposition or abdication;

(*c*) political or constitutional relations between Chiefs under native customary law.

Privilege.[1]

The same provision is made as contained in the Jamaica Constitution (*see* JOURNAL, Vol. XIII, 204).

Duration of Assembly.

Sessions are summoned for such time and place as the Governor may by Proclamation appoint and 12 months must not intervene between Sessions. The Government must dissolve the Assembly at the expiration of 4 years from the return of the first writ therefor, if it shall not have been previously dissolved and General Elections must take place within 2 months after every dissolution.[2]

Legislation.

Subject to the provisions of the Order, the Governor is empowered, with the advice and consent of the Legislative Assembly, to make laws for the peace, order and good government of the Gold Coast:[3]

Provided that should any such law be repugnant to any provision of the Trusteeship Agreement approved by the General Assembly of the United Nations on the thirteenth day of December, 1946, in respect of Togoland under United Kingdom Trusteeship, such law shall to the extent of such repugnancy, but not otherwise, be void.

(2) No such law shall make persons of any racial community liable to disabilities to which persons of other such communities are not made liable.

(3) Any laws made in contravention of subsection (2) of this section shall to the extent of such contravention, but not otherwise, be void.

Royal Instructions. 51.—Subject to the provisions of this Order the Governor and the Assembly shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under Her Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

Under S. 6 of S.I. 1950, No. 2095, the Governor of the Gold Coast, on behalf of the Sovereign, exercises all such powers and jurisdiction as Her Majesty may have in the Northern Territories and may take all such measures therein as in Her Majesty's interest he may think expedient.

Under Ss. 2 and 3 of S.I. 1950, No. 2096, the following sections 7 and 8 thereof are substituted for Ss. 7 and 8 of the Principal Order. As these 2 sections are *verbatim* except as to "Northern" or "Southern Section" respectively, they are quoted together as under:

7. So far as the same may be applicable, and subject to the provisions of the Gold Coast (Constitution) Order in Council, 1950, the

[1] *Ib.* Ss. 59 (2) (*b*); 62. [2] *Ib.* Ss. 63, 64, 65. [3] *Ib.* S. 50.

laws for the time being in force in the Protectorate shall, as from the date of the commencement of this Order, apply to and be the laws in force in the Northern and Southern Sections; Provided always that, should any such law so applied as aforesaid be repugnant to any provision of the terms of the Trusteeship Agreement, such law shall to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative: Provided further that no law in force in the Protectorate at the date of the commencement of this Order, the application of which is expressly or by necessary implication restricted to the Protectorate, shall apply to the Northern and Southern Sections by reason only of the provisions of this section.

The Royal Instructions provide that the Governor may not, without instructions, assent to Bills dealing with: divorce; grants to the Governor; currency; banking; differential duties; elections; installation, etc., of Chiefs; Stool property; relations between Chiefs under customary native law; affecting Treaties; Fighting Force discipline; Royal Prerogative; certain trade or transport; or a Bill containing provisions to which Royal Assent has once been refused.

It is, however, provided that the Governor may act without such instructions (except in case of Treaties) should he be satisfied that there is urgent necessity for the Bill to be put into immediate operation.[1]

Laws, Rights and Interests of Inhabitants.—Clause 10 makes the same provision as does Clause 17 of the Sierra Leone R.I. (*see* Article XXIII hereof).

Private Bills.—Clause 11 of the R.I. reads the same as in the Constitution of Jamaica. (*See* JOURNAL, Vol. XIII, p. 207.)

Parts III, VI and VII deal respectively with Transitional Provisions for the exercise of the Governor's Powers; the Public Service and Miscellaneous.

Inauguration of the New Constitution.

On February 20, the new Leglisative Assembly met in the King George V Memorial Hall. The Governor addressed the Assembly, after which members took the Oath and the House proceeded to the election of a Speaker, their choice being Mr. C. E. Quist, C.B.E.,[2] the President of the old Legislative Council

When Mr. Quist arrived the following morning, he was met at the entrance to the Hall by the Chief Secretary and the Clerk of the Assembly. After Mr. Speaker had entered the Hall and taken the Oath, the Chief Secretary congratulated Mr. Quist on his election to the office of Speaker and assured him of the co-operation of members of the House, to which he made the traditional reply. After the election of Deputy Speaker, the House adjourned until February 26. The formal inauguration of the New Constitution of the Gold Coast took place on March 29, 1951.

[1] R.I. 9.

[2] Now Sir Emmanuel.—[ED.]

XXII. THE NIGERIA CONSTITUTION, 1951

By The Editor

There have been earlier references in the JOURNAL to constitutional movements in Nigeria.[1]

The Constitution under consideration in this Article is embodied in the following Instruments:

(*a*) Statutory Instruments 1951, No. 1172: Foreign Jurisdiction —The Nigeria (Constitution) Order in Council, 1951;
(*b*) Statutory Instruments 1951, No. 2127: Foreign Jurisdiction —The Nigeria (Revenue Allocation) Order in Council, 1951;
(*c*) Letters Patent constituting the office of Governor and Commander-in-Chief of Nigeria, dated December 5, 1951;
(*d*) Royal Instructions to the Governor and Commander-in-Chief of November 27, 1951;
(*e*) Royal Instructions to the Lieutenant-Governors of the Northern, Western and Eastern Regions of Nigeria of November 27, 1951; and
(*f*) Statutory Instruments 1951, No. 1957, Foreign Jurisdiction —The Nigeria (Supplementary Provisions) Order in Council, 1951.

The territories to which this Article relates comprise the Colony of Nigeria, the Protectorate together with the Cameroons allotted to Great Britain under Mandate (B) from the League of Nations and now under United Kingdom Trusteeship approved by the General Assembly of the United Nations on December 13, 1946.

The Nigeria (Constitution) (Electoral Provisions) Order in Council of 1951, as well as the (Legislative Council) Order in Council 1946 and its amending Order of 1949 are revoked.[2]

Central

The following is an outline of the Legal Instruments above referred to (*see* (*a*)-(*f*) above) in so far as they relate particularly to the Legislature, its powers, members, legislation and procedure.

Governor.

The office of Governor and Commander-in-Chief of the Colony and Protectorate of Nigeria, together with the Cameroons under United Kingdom Trusteeship, is constituted under the L.P. of December 5, 1951.

The R.I. to the Governor are dated November 27, 1951, and in addition to the normal provisions, lay down the conditions[3] under which he is required to consult the Council of Ministers, but, should

[1] *See* JOURNAL, Vols. XI-XII. 79; XIII. 97; XV. 247.
[2] S.I. 1951, No. 612; S.R. & O. 1946, No. 1370; S.I. 1949, No. 2001.
[3] G.R.I., Cl. 4.

he act against their advice, he must report to the Secretary of State at the first convenient opportunity, with his reasons therefor and any member of the Council may require record to be made in the Minutes of any advice he has given with his reasons therefor.[1]

The Governor decides what business is to be put before the Council, but if 6 or more of its members make written request for the consideration of any matter upon which the Governor is required to consult the Council, then, subject to Cl. 5 (1) he must submit such question to the Council for its consideration.[2]

Governor's Emergency Powers.—These are laid down in S. 86 of the Order in the same terms as in the Gold Coast Constitution 1950 (including Bills passed at Joint Sittings). (See Article XXI hereof.)

Clause 10 of the R.I. contains similar provisions to those embodied in the Jamaica R.I. (*See* JOURNAL, Vol. XIII. 207.)

R.A.—Section 87 provides for the submission of Bills passed by the House of Representatives to the Governor which he may assent, refuse assent or reserve, for the King's pleasure. This includes any Bill dealing with the Powers and Privileges of the House of Representatives or of any Regional Legislative House or the members of either, until the Secretary of State has authorized assent thereto.

Privy Council.

The Governor's L.P. provide for a Privy Council for the Colony consisting of such number of Official and Appointed Members as he may decide, but not less than 4. The Official Members must be public officers, but no official may be an Appointed Member and an Official Member may either be appointed by name or office.[3] Both classes of members are appointed for 3 years and decision as to right of membership rests with the Governor.

The Privy Council is summoned by the Governor; the quorum is 3 excluding the Governor or Presiding Member.[4]

The Governor may consult this Council in the exercise of the prerogative of mercy but is not compelled to follow their advice; the usual provisions are made as to the attendance and report of the Judge.[5]

The Privy Council of the Colony is also the Privy Council for the Protectorate and the Cameroons.

The Council of Ministers.

This Central Executive of the Colony consists of the Governor, as President, the Chief Secretary to the Government of Nigeria, the Lieutenant-Governors of the 3 Regions, the Attorney-General and

[1] *Ib.* Cl. 5. [2] *Ib.* Cl. 6. [3] *Ib.* Cl. 16. [4] *Ib.* Cl. 18, 19.
[5] *Ib.* Cl. 17.

the Financial Secretary to the Government, as the 6 *ex-officio* members; and 4 M.H.R.s returned by each of the 3 Regions, but one of the 4 members returned by the Eastern Region must be an Elected Member of their House of Assembly who represents in that House a Division in the Cameroons.

In regard to the appointment by the Governor of the Regional Ministers, the Lieutenant-Governor of the Region submits the name of the person he recommends to the Governor; both the Governor and Lieutenant-Governor act in their discretion.[1]

The names of the non-official Ministers returned by the Lieutenant-Governors of the Northern or Western Region and proposed by the Governor are submitted to the Joint Council of such Region by the Lieutenant-Governor, which Council must, before the termination of the meeting, resolve whether to appoint the person, whereupon he is appointed by the Governor. Provision is made for filling casual vacancies among the Regional Ministers occurring otherwise than by dissolution of the House of Representatives.[2]

In regard to the Ministers representing the Eastern Region the above procedure applies, except that the Eastern House of Assembly acts in place of the Joint Council, but in the voting the President has no casting vote.[3]

The Governor may revoke the appointment of a Minister upon a $\frac{2}{3}$ vote of the House of Representatives. Should, however, he consider that any Minister has failed to carry out the policy or any decision of the Council the Governor may revoke the appointment.[4]

The seat of a Minister becomes vacant upon his ceasing to be an M.H.R., but should a Minister cease to be an M.H.R. he does not vacate his seat on the Council until the Governor appoints another M.H.R. for the same region in his place. The Governor may also declare a Minister to be temporarily incapable of discharging his function as such.[5]

Temporary Ministers may be appointed to fill casual vacancies among the *ex-officio* members.[6]

The method of voting on the appointment and removal of Ministers is by secret ballot[7] and all questions of membership of the Council are determined by the Governor.[8]

As to the procedure in the Council, the Governor, so far as practicable, presides at meetings of the Council, which are summoned by him. The Council must also be so summoned on the written request of 6 or more members, but no business except that of adjournment may be transacted if a quorum of 7 members, excluding the Governor or Presiding Member, is not present.

Questions are decided by a majority of votes and in case of an equality of votes the Governor may give a casting vote; but should

[1] S.I. 1951, No. 1172, Ss. 145-149.
[2] *Ib.* S. 150. [3] *Ib.* S. 151. [4] *Ib.* S. 152. [5] *Ib.* S. 153.
[6] *Ib.* S. 154. [7] *Ib.* S. 155. [8] *Ib.* S. 156.

another member be presiding he has both a deliberative, as well as, in case of equality of votes, a casting vote.[1]

The "responsibility" of a Minister for any matter means:

(*a*) submitting to the Council of Ministers questions relating to such matter;

(*b*) ensuring, in association with the appropriate public officer, that effect is given to such decisions taken by the Governor in the Council of Ministers relating to such matter; and

(*c*) conducting in the House of Representatives government business relating to such matter.

The Governor may charge a Minister with Portfolio, with such matters as may be prescribed, and revoke or vary such directions. Ministers without Portfolio may not exceed three.

A Minister without Portfolio may be charged with any of the 30 matters mentioned in Schedule III to the Order.[2]

House of Representatives.

This is the central Legislature for the whole of Nigeria, and consists of: a President; the Chief Secretary to the Government of Nigeria; the Lieutenant-Governors of the Northern, Western and Eastern Regions, the Attorney-General and the Financial Secretary to the Government of Nigeria, as the 6 *ex-officio* members; 136 Representative Members elected (*as stated below*); and not more than 6 Special Members appointed by the Governor to represent interests or communities which are, in his opinion, not otherwise adequately represented in the House.[3]

President.—The Governor, acting in his discretion, may by Instrument under the public seal, appoint a person who is not any type of Member of the House of Representatives to be President thereof, and until such appointment or in case of vacancy therein, the Governor is President of the House. The appointment is during H.M.'s pleasure and, subject thereto, for such period as may be specified in the Instrument.

In the event of the absence of the President, the Governor may appoint someone, either generally or specially, failing that, then the person standing next in order of precedence, to act as President.

The Governor may in his discretion address the House of Representatives at any time when he thinks fit, notwithstanding that some other person is, for the time being, President of the House.[4]

M.H.R.s.—The 136 members for the 3 Regions are elected as follows:

Northern Region.—The Joint Council of the Region elects 68 members from among the Members of the House of Chiefs and House of Assembly in the manner prescribed by regulation.[5]

But these 68 members must include:

[1] *Ib.* S. 161.
[2] *Ib.* Ss. 162-4.
[3] *Ib.* Ss. 67, 69, 70.
[4] *Ib.* S. 68.
[5] *Ib.* Ss. 71, 75.

(*a*) at least one member of the Northern House of Chiefs who is a first-class Chief or a Chief exercising his functions as such in that Province; and

(*b*) at least one Elected Member of the Northern House of Assembly who represents that Province in the said House.

"Chief" and "First-class Chief" are defined in S. 14 of the Order as follows:

"Chief" means any person who is, for the time being, recognized as a Chief in the Northern Region by the Governor acting in his discretion;
"first-class Chief" means any Chief (as defined by this section) who is, for the time being, graded as a first-class Chief under the Appointment and Deposition of Chiefs Ordinance or any enactment amending or replacing that ordinance;

Western Region.—The 36 members representing the Region are elected—3 by the Members of the Western House of Chiefs from among their own number by regulation (*as above*); and 31 by the Members of the Western House of Assembly from among their number, by regulation (*as above*), but the members elected by the Assembly must include 2 representing the town of Lagos in that Assembly; and in respect of each other Division of this Region, at least one member of such Assembly representing that Division therein.[1]

Eastern Region.—The 34 representing this Region are elected by the Members of the Eastern House of Assembly from among their own number by regulation (*as above*); but such number must include in each Province of the Region at least 2 Elected Members of the Assembly representing a Division or Divisions in that Province with the proviso that in respect of that Province, including the township of Calabar, the Elected Members must include at least one person who, at the time of his election to the Assembly, was a registered elector in that township.[2]

Tenure of Membership.—Subject to this Order, Special M.H.R.s hold their membership during the King's Pleasure and the seat of both an Elected and Special M.H.R. becomes vacant—on dissolution of the House; death; if an Elected Member, or ceasing to be a member of a Regional House; or, if absent from 2 consecutive meetings of the House without written excuse by the President given within one month after the second meeting. "Meeting" is defined in S.I. as, "any sitting or sittings" either of the Central or any Regional House "commencing when the House first meets after summons and ending on adjournment *sine die* or at the end of a Session".

Both Elected and Special M.H.R.s resign in writing to the President.[3]

The Governor may declare a Special M.H.R. temporarily incapable of discharging his duties as a member, thereupon he ceases to sit or vote in the House.[4]

[1] *Ib.* S. 72. [2] *Ib.* S. 73. [3] *Ib.* S. 76. [4] *Ib.* S. 77.

All decisions as to Elected membership rest with the Governor[1] and vacancies among Special Members may be filled by him.[2]

Procedure.—This is laid down in Ss. 83, 84 and 108-111 and all questions are decided by a majority of votes, with the permissive right of the President or other member presiding to give a casting vote in case of an equality of votes; should such right not be exercised then the Motion is lost.

The penalty for an unqualified person (including the Moslem Adviser to the Northern Region House of Chiefs) sitting or voting when not a member is a fine not exceeding £20 for every day upon which he so sits or votes, recoverable by action in the Supreme Court at the suit of the Attorney-General.[3]

Oath.—No member may sit or vote until he has taken the Oath or made Affirmation of Allegiance. Section 112 (2) of the Order (which applies also to the Adviser on Moslem Law in the Northern House of Chiefs) contains the same provision in regard to the taking of the Oath during recess or adjournment as under the Gibraltar Constitution. (*See* JOURNAL, Vol. XIX. 113.)

Nationality.—The same provision is made as under the Gold Coast Constitution, 1950. (*See* Article XXI hereof.)[4]

Commonwealth and Empire.—It is provided in S. 1 (2) of the Order that—

(*a*) any reference to His Majesty's Dominions shall be construed as including a reference to all territories under His Majesty's protection or in which His Majesty has for the time being jurisdiction.[4]

Offices of Profit.—Similar provision is made in S. 1 of the Order as under the Gold Coast Constitution, 1950. (*See* Article XXI hereof.)[4]

Powers and Privileges.—Sections 113 and 114 of the Order (which applies also to the Adviser on Moslem Law) make the same provision in regard to this subject as under the Jamaica Constitution. (*See* JOURNAL, Vol. XIII. 204.)

Official Language.—The official language of the House is English.[5]

Sessions, Prorogation and Dissolution.—Subject to the Order, Sessions of the Central Legislature are held at such times and places as the Governor may, by gazetted Proclamation, appoint, but 12 months must not intervene between Sessions, irrespective of a Dissolution.[4]

The Central Legislature may, at any time, by gazetted Proclamation, be prorogued or dissolved by the Governor, but unless sooner dissolved, its duration is 5 years from the date of its first Sitting after any Dissolution.[6]

Central Legislation.

Subject to this Order and the R.I., the Governor, with the advice

[1] *Ib.* S. 78. [2] *Ib.* S. 79. [3] *Ib.* S. 115. [4] *Ib.* S. 1.
[5] *Ib.* S. 114. [6] *Ib.* S. 117.

and consent of the House of Representatives, is empowered to make laws for the peace, order and good government of Nigeria.[1]

Restrictions, however, are laid down in regard to Bills affecting the public service, and if the Governor in his discretion, or the Attorney-General, gives notice to the House of Representatives or the Committee thereof that, in his opinion, a Bill or Motion before the House would affect the public service in any way, then no further proceedings may be taken thereon without the consent of the Governor and no such Motion for the amendment of a Bill may have effect until after 7 days from the date it was carried, when, if the Governor within such period certifies in writing that any alteration effected by the Motion would prejudicially affect any public officer, such Motion shall not have effect, without the approval of the Secretary of State.

Should the Governor consider that any such alteration effected by any Bill presented to him for his assent would prejudicially affect any public officer, then the Governor must reserve the Bill for signification of the Queen's Pleasure.

A Central Law may add any matter to the matters mentioned in Schedule IV (dealing with provision for the appropriation, lending or borrowing of moneys) of the Order or remove therefrom any matter so added.

Consideration by Regional Legislative Houses of Central Bills.—Subject to the provisions of S. 89 of the Order, all Bills, other than Appropriation or Supplementary Appropriation Bills, must, before introduction in the House of Representatives, be Tabled in each Regional House, which may, subject to their Standing Orders, consider the Bill and submit to the Governor such advice as such House may, by Resolution, decide, but this Tabling does not apply to Bills dealing with subjects not within the competence of a Regional Legislature.

The Resolution above-mentioned must be Tabled in the House of Representatives before *1.R* of the respective Bill, but failure by any legislative House to advise thereon does not prevent the introduction of the Bill or affect its validity.

The provisions of S. 89, however, do not apply to Bills which, prior to their introduction into the House of Representatives, are certified in writing by the Governor to be of a formal nature or too urgent to permit of their consideration by a Regional House.[2]

Private Bills.—The same provisions apply as under the Jamaica Constitution[3] except that publication is required also to be made in the *Official Gazette* of the Regions.[4]

The Regions.

Territorial Divisions.—Nigeria is divided into 3 Regions, the

[1] *Ib.* Ss. 81, 82. [2] *Ib.* S. 89. [3] *See* JOURNAL, Vol. XIII. 207.
[4] G.R.I., Cl. 11; L.G.R.I., Cl. 8.

Northern, Western and Eastern. The Governor, in his discretion, may by Proclamation, with the approval of the Secretary of State, define, and from time to time vary, the boundaries of any Region or divide it, and may revoke any such Proclamation. The 3 Regions comprise the Territory specified in Schedule 1 to this Order.[1]

Executive Authority.

This extends to all matters upon which the Region may make laws and must be so exercised as not to impede or prejudice the executive authority of Nigeria.[2]

The chief executive authority in a Region is the Lieutenant-Governor, who acts under directions from the Governor.

Neither the question whether the executive authority of a Region has been exercised as above, nor actions by the Lieutenant-Governor as above-mentioned, may be inquired into by any Court.

The Governor acts in his discretion in regard to the exercise of "a discretionary power" by a Lieutenant-Governor, such power being a power on which the Lieutenant-Governor is not obliged to consult the Executive Council of a Region. A central law, which applies to any Region, may confer powers or impose duties outside the executive authority of a Region.[3]

Regional Executive Council.—This Council is the principal instrument of policy in matters to which the executive authority of the Region extends, and exercises such powers as conferred by this Order, Orders in Council or R.I. Save as provided by any R.I. the Lieutenant-Governor must consult with his Executive Council in the exercise of his powers under this Order and act according to the advice of such Council on any matter on which he is obliged to consult them.[4]

Northern Region.

The Executive Council consists of the Lieutenant-Governor, who is President thereof, the Civil Secretary, the Legal Secretary and the Financial Secretary as the 3 *ex-officio members*; such Official Members as the Lieutenant-Governor may appoint (but not more than 2 public officers) and the Regional Ministers. Of these Regional Ministers, not less than 2 or more than 3 may be appointed from the first-class and other Chiefs who are members of the Northern House of Chiefs, and not less than 4 or more than 6 from among the Elected and Special Members of the Northern House of Assembly.[5]

Regional Ministers are appointed from the members of the Regional Legislative House, but no member of such a House who is a public officer may vote, and the President has no casting vote.

[1] S.I. 1951, No. 1172, Ss. 5, 6. [2] *Ib.* Ss. 120, 121.
[3] *Ib.* S. 122. [4] *Ib.* Ss. 123-4. [5] *Ib.* S. 25.

Casual vacancies are filled from among the members of the Regional Legislative House on the submission of a person, by the votes of a majority (excluding public officer members) in such manner (otherwise than at a meeting of the House) as the Lieutenant-Governor may by regulation prescribe.[1]

Western and Eastern Regions.—The Executive Councils of these Regions are similarly constituted to that of the Northern Region, except in regard to the Regional Ministers.

In the Western Region, 2 are appointed from among the Head and other Chiefs who are Members of the Western House of Chiefs and not less than 4 or more than 7 from the Elected and Special Members of the House of Assembly with certain powers vested in the Lieutenant-Governor as to the actual number of members of the House of Assembly he may, from time to time, prescribe.

In the Eastern Region the number of Regional Ministers must not be less than 7 nor more than 9, appointed by the Elected and Special Members of the House of Assembly, with the proviso that the number of persons so appointed must include at least one Elected Member representing a Division in the Cameroons. Subject to the Order, the Lieutenant-Governor has the same power as above in regard to the actual number of Regional Ministers.[2]

Tenure of Office.

(*a*) *Official Members.*—These members hold their seats at the pleasure of the Governor and, in respect of any such member, appointed by name. The seat of any such member becomes vacant upon the expiry of the period for which he is appointed; upon death; by ceasing to be a public officer; or by resignation with the permission of the Lieutenant-Governor.[3]

(*b*) *Regional Ministers.*—The Lieutenant-Governor may be requested to revoke the appointment of a Regional Minister on a $\frac{2}{3}$ vote of a Regional Legislative House. If the Lieutenant-Governor of a Region considers that any such Minister has failed to carry out the policy or decision of his Executive Council, he may, by public Instrument, revoke the appointment.[4] The seat of a Regional Minister in an Executive Council becomes vacant upon his ceasing to be a member of the Regional Legislative House appointing him (but after a Dissolution he holds such appointment until his successor is appointed); by absence from the Colony without permission of, or by resignation to, the Lieutenant-Governor.

The Lieutenant-Governor may, by written declaration, remove a Regional Minister if unable through illness to carry on his duties.[5]

The Lieutenant-Governor may also, in event of a vacancy, appoint a temporary member of the Executive Council.[6]

The method of voting employed on appointment and removal

[1] *Ib.* S. 128. [2] *Ib.* Ss. 126-7. [3] *Ib.* S. 129. [4] *Ib.* S. 130.
[5] *Ib.* S. 131. [6] *Ib.* 132.

of a Regional Minister is by secret ballot, and all decisions as to membership of the Executive Council are made by the Lieutenant-Governor.[1]

Section 135 lays down the order of precedence in a Regional Executive Council.

In the absence of the Lieutenant-Governor such member as he may appoint acts in his stead, or failing that, the member standing next in order of precedence.[2]

The Special Functions of a Regional Minister.—These correspond with those provided by Ss. 162-4 in respect of members of the Council of Ministers but with the substitution of the Lieutenant-Governor, the Executive Council and the Regional Legislative House.[3]

Subject to the provisions of S. 141, the Lieutenant-Governor of a Region may, by direction in writing, charge a Regional Minister with such matters as may be prescribed by such directions, and revoke or vary such directions. A Regional Minister not charged with the responsibility of any matter is styled a Regional Minister without Portfolio, of which there may not be more than 3 in any Region.

The Lieutenant-Governor may, however, assign to *ex-officio* or Official Members of any Executive Council such functions and responsibilities as he may think fit;[4] and leave of absence to a Regional Minister is granted by him.[5]

The Regional Executive Council is summoned by the Lieutenant-Governor, but it must be summoned should 6 or more members thereof so request in writing. Six, excluding the Lieutenant-Governor or other member presiding, is a quorum. Questions in such Councils are decided by a majority of the votes of those present, excluding the Lieutenant-Governor. Should there be an equality of votes, he may exercise a casting vote, but should any other member be presiding, he may, in such instance, have both an original and a casting vote.[6]

Regional Legislative Houses.

Northern Region.—In this Region "Chief" and "First-class Chief" are as defined in S. 14 (*see above*).

The Legislature consists of 2 Houses, the House of Chiefs and a House of Assembly.

House of Chiefs.—This House comprises: the Lieutenant-Governor (who is President thereof); 3 Official Members; all First-class Chiefs; 37 other Class Chiefs selected as provided for by Regulations under S. 56, and a voteless Adviser on Moslem Law appointed by the Lieutenant-Governor who holds his seat during the Lieutenant-Governor's Pleasure, such seat becoming vacant upon death,

[1] *Ib.* Ss. 133-4.
[2] *Ib.* S. 136.
[3] *Ib.* S. 140.
[4] *Ib.* S. 141.
[5] *Ib.* S. 143.
[6] *Ib.* Ss. 136-139.

resignation, or dissolution. Should the Adviser become incapable of discharging his functions, the Lieutenant-Governor may make a temporary appointment.

In addition to the above, the Official Members of the House of Chiefs are public officers, appointed by the Lieutenant-Governor, either by name or by reference to his office.[1]

Section 18 makes the following other provisions in regard to the office of the Adviser on Moslem law:

> (2) (*b*) A person appointed under this subsection shall, so long as his appointment subsists, be deemed to be the adviser on Moslem law and, subject to the provisions of this subsection, the provisions of this Order shall have effect accordingly.
>
> (*c*) An appointment made under this subsection shall cease to have effect if the Lieutenant-Governor notifies the person appointed that some other person is about to assume or resume the functions of adviser on Moslem law.
>
> (3) The powers conferred by this section on the Lieutenant-Governor shall be exercised by him in his discretion.
>
> (4) Unless it is otherwise expressly provided, none of the following provisions of this Order shall be construed as applying or referring to, or having any effect with respect to, the adviser on Moslem law.

House of Assembly.—This House consists of a President; 4 Official Members (who must be public officers appointed by the Lieutenant-Governor, either by name or office); 90 Elected Members, and such Special Members as are appointed by the Lieutenant-Governor to represent interests or communities which in his opinion are not otherwise adequately represented in such House. The number, however, may not exceed 10.[2]

The Elected Members are qualified persons elected under Part 7 of the Order of Chapter II. (*See below.*)[3]

President.—This appointment is made by the Lieutenant-Governor, but the person so appointed may not be any type of member of the House.[4]

Western Region.

The Legislature consists of a House of Chiefs and a House of Assembly.[5]

"Head Chief", "Chief" are defined in the Order[6] as persons recognized by the Lieutenant-Governor, who may designate any person as Head Chief or Chief or withdraw such recognition, and in deciding such recognition of a Chief the Lieutenant-Governor must have regard to whether he holds a title associated with any part of the Territory in, or with any community, or class or group of persons of the Western Region. In such recognition, the Lieutenant-Governor must specify a Division of the Western Region in respect of which such person is so recognized as Chief or Head Chief, as

[1] *Ib.* S. 17. [2] *Ib.* Ss. 19, 23. [3] *Ib.* Ss. 19, 21-23.
[4] *Ib.* S. 20. [5] *Ib.* S. 26. [6] *Ib.* Ss. 24, 25.

the case may be. The decision of the Lieutenant-Governor in regard to the above is final.

House of Chiefs.—This House comprises: the Lieutenant-Governor, as President, 3 Official Members and Head and Chiefs (not exceeding 50, as provided in S. 28 of the Order)[1] selected in accordance with S. 56 of the Order.

House of Assembly.—This House consists of a President, who may not be a member thereof; 4 Official Members, who must be public officers appointed either by name or by office; 80 Elected Members, elected by regulations under Ss. 63-66 of the Order; and such Special Members, not to exceed 3, as may be appointed by the Lieutenant-Governor to represent interests or communities not otherwise adequately represented in that House.[2]

Eastern Region.

House of Assembly.—The Legislature of this Region is, like the Central Legislature, unicameral and consists of: the Lieutenant-Governor, as President; 5 Official Members (including one public officer serving in that part of the Cameroons situate in the Eastern Region), who must be public officers appointed by name or office; 80 Elected Members, elected under Ss. 63 to 66 of the Order; and not more than 3 Special Members to represent interests or communities not otherwise adequately represented in such House.[3]

Vice-President.—The Lieutenant-Governor may appoint from among the Elected Members of this House a Vice-President to hold office for such time as prescribed in his Instrument of appointment who, unless he earlier vacates office, holds it until the dissolution of the House or when ceasing to be a member thereof. His resignation is addresed to the Lieutenant-Governor.[4]

All Regions.

Qualifications and Disqualifications for Elected Membership of the Houses of Assembly.—Qualifications are: to be a British subject or a British Protected person of not less than 21 years of age and, in the case of the Northern House of Assembly, a male person; a native of the Region in which he seeks election, or has resided therein for a continuous period immediately preceding the election, for at least 1 year in the case of the Western or Eastern Region, or at least 3 years if a resident of the Northern Region. To be a native of a Region, a person must be born therein or his father to have been so born.[5]

Disqualifications are: in addition to Nos. (1)-(5) under Gambia (*see* Article XX hereof); under sentence of death; within the past 5 years sentenced by a Nigerian Court for an offence prescribed in

[1] *Ib.* Ss. 27, 29. [2] *Ib.* Ss. 30-34. [3] *Ib.* Ss. 35-39. [4] *Ib.* S. 40.
[5] *Ib.* S. 41.

Schedule II of the Constitution; or if a member of any other Regional House.[1]

Tenure of Seats.—An Official Member of any Regional House holds his seat during the "Pleasure" of the Lieutenant-Governor, and if so appointed by name his seat becomes vacant upon dissolution of the House, death, or, ceasing to be a public officer. Resignations are addressed to the Lieutenant-Governor.[2]

The Presidents of the Northern and Western Houses of Assembly hold their seats during the "Pleasure" of the Lieutenant-Governor, and the same provisions apply as to tenure of seats by Official Members appointed by name (*see above*), but if not public officers the permission of the Lieutenant-Governor for resignation is not required.[3]

Special Members hold their seats at the "Pleasure" of the Lieutenant-Governor, such only becoming vacant upon dissolution, death, resignation or absence for 2 consecutive meetings of the House without written excuse from the President within one month after the end of the second meeting.[4]

Should the Lieutenant-Governor of a Region declare that an Official or Special Member of any Regional Legislative House is temporarily unable to discharge his functions, his duties as such cease until he is declared again capable of carrying out his duties.

Similar declaration may be made by the Lieutenant-Governor in respect of the Presidents of the Northern or Western House of Assembly.[5]

The seat in the Northern Region House of Chiefs as first-class Chief becomes vacant: upon death, or ceasing to be a first-class Chief, and in the case of any Chief, upon death, dissolution, becoming a first-class Chief or on being elected as a member under S. 56 of the Order.[6]

The seat in the Western Region House of Chiefs of any person who is a member thereof by virtue of being the Head Chief in a Division in which there is only one Head Chief, becomes vacant: upon death, ceasing to be a Head Chief, or being the only Head Chief, in that Division.

The seat of a person in the Western Region House of Chiefs, who is a member thereof by selection under S. 56 of the Order, becomes vacant upon dissolution of the House; death; ceasing to be a Chief in the Division for which he was selected; becoming entitled to membership under S. 28 of the Order as being the only Head Chief in that Division; or in such circumstances as may be prescribed by Regulation.[7]

The seat of an Elected Member of a House of Assembly becomes vacant on its dissolution; his death; absence from 2 consecutive meetings of the House without written excuse therefor from the

[1] *Ib.* S. 42. [2] *Ib.* S. 43. [3] *Ib.* S. 44. [4] *Ib.* S. 45.
[5] *Ib.* S. 46 (2). [6] *Ib.* S. 47. [7] *Ib.* S. 48.

President within one month of its second meeting; ceasing to be a British subject or a British protected person without becoming a British subject; in allegiance to a Foreign State; bankruptcy; any imprisonment exceeding 6 months; subject to the disqualifications above-named, or under S. 63 of the Order; or upon resignation to the President of his House.[1]

Section 50 provides for the appointment by the Lieutenant-Governor of a temporary President of the Northern or Western House of Assembly and S. 51 for the similar appointment of temporary Members of Regional Legislative Houses.

President.—The President of a Regional Legislative House may, with the approval of the Lieutenant-Governor, summon to any meeting thereof any person who is a public officer, notwithstanding that such person is not a member of the House, should he consider that the business of the House makes the presence of such person desirable, and such public officer is entitled to take voteless part in the proceedings of the House.[2]

The President, or in his absence such member thereof as the Lieutenant-Governor may in his discretion appoint, or in his absence, or if no member is appointed, such member as the House may elect for the sitting, shall preside at its meetings. The same procedure applies in the Eastern House of Assembly but with the addition of the Vice-President.[3]

Decisions of all questions in regard to membership of a House of Chiefs, a member (other than an Elected Member of a House of Assembly, or the Adviser on Moslem Law in the Northern House of Chiefs), rest with the Lieutenant-Governor. The decisions in respect of an Elected Member of a House of Assembly are determined according to regulations under Part 7 of Chapter II of the Order.[4]

A person may be an Official Member of the House of Chiefs and the House of Assembly of any Region.[5]

Joint Councils in Northern and Western Regions

These Councils consist of not more than 40 members (excluding public officers) of each Legislative House of the Northern or Western Region elected thereto at its first meeting after any dissolution of such House, or as soon thereafter as convenient. Casual vacancies are filled by the members of the House in which such vacancies occur.

The Lieutenant-Governor is informed of the election of every member of the Joint Council by the Clerk of the House by which he is elected.

The tenure of office of a member of the Joint Council becomes vacant: on death; dissolution of the House electing him, or ceasing to be a member thereof, other than by dissolution. A member of

[1] *Ib.* S. 49. [2] *Ib.* S. 52. [3] *Ib.* S. 53. [4] *Ib.* S. 54.
[5] *Ib.* S. 55.

this Council resigns to the President of the House by which he was elected. All decisions in regard to membership of a Joint Council rest with the Lieutenant-Governor.[1]

The function of a Joint Council is to elect members of the House of Representatives in accordance with Chapter III of this Order and to decide whether the appointment of Ministers be approved.[2]

The procedure in Joint Council is that all questions are decided by a majority of the members present and voting, but the Presiding Person has neither an original nor a casting vote, and in case of an equality of votes the Motion must be declared lost. The Lieutenant-Governor, or such other person (not being a member of the Joint Council) as he may direct, presides at meetings of the Joint Council. The quorum is 50, and the Joint Council can only be summoned by the Lieutenant-Governor, who may make, amend, or revoke Standing Orders for the conduct of the proceedings.

The above-mentioned powers apply also to the Joint Council of the Western Region, except in regard to the election of members of the House of Representatives under Chapter II or the Order.[3]

Regional Legislation.—All Bills are required to be passed by both Houses of the Northern or Western Regions without amendment or with such amendments as are agreed to by both Houses.[4]

Subject to the provisions of this Order, the Lieutenant-Governor is empowered, with the advice and consent of the Legislative Houses thereof, to make laws for the peace, order and good government of such Regions, with respect to any of the 30 matters set out in Schedule III of the Order or delegated to it by the Central Legislature under S. 92. At the same time, the validity of a Regional law may not be called into question as to its valid declaration.[5]

Section 93 provides that, subject to the Lieutenant-Governor having the prior consent of the Governor to any declaration under S. 86, Ss. 82 to 86 of the Order dealt with above in regard to Central Legislation apply also to the Legislative Houses of a Region as to the House of Representatives.

References therein to the Governor, the Attorney-General and the *Gazette* are references to the Lieutenant-Governor, the Legal Secretary of the Region and its official *Gazette*, and also as if the words "or in any joint sitting of delegates convened under S. 105 of this Order" were inserted in S. 86 immediately after the words "including any Committee thereof".[6]

Bills in Northern and Western Regions.—In these Regional Legislative Houses a Bill may be introduced either into the House of Chiefs or the House of Assembly, but a Bill may not be introduced into the House of Chiefs if the Lieutenant-Governor certifies in writing that it is a Money Bill as defined in S. 94.

R.A.—This is given by the Lieutenant-Governor in the King's

[1] *Ib.* Ss. 57-59. [2] *Ib.* S. 60. [3] *Ib.* Ss: 61, 62.
[4] *Ib.* S. 90. [5] *Ib.* Ss. 91, 92. [6] *Ib.* 93.

Name or His Majesty's Assent through a Secretary of State, presented as described below.[1]

Governor's Powers.—All Regional Bills are sent by the Lieutenant-Governor to the Governor who may object thereto on the grounds that it—

(2) (*a*) relates to any matter with respect to which the Legislature of the Region has no power to make laws; or
(*b*) is inconsistent with the general interests of Nigeria or with any directions given under s. 121 of this Order; or
(*c*) is inconsistent with the obligations of Nigeria under any treaty or other agreement.

(3) The validity of any objection which is taken to a Bill under this section shall not be called in question in any court.

Notice of Bills not objected to as above is given by the Governor to that effect under S. 96 of this Order to the Lieutenant-Governor for his assent.[2]

If the Governor objects to a Bill sent to him under S. 96 of this Order and decides that the grounds for such objection cannot conveniently be removed by amendment of the Bill, he notifies the Lieutenant-Governor in writing, stating his reason, whereupon the Lieutenant-Governor will inform the Legislative Houses of the Region that the Bill has thereby lapsed, and, without the Governor's approval, no Bill having the same effect may be introduced in either House that Session. The decision as to the Bill being substantively of the same effect, however, rests upon certification thereof by the Legal Secretary of the Region.[3]

But should the Governor decide that his objection can be removed by amendment, he informs the Lieutenant-Governor of the "required amendments"; the Lieutenant-Governor then returns the Bill to the Legislative Houses of the Region, whereupon the following procedure is applied:[4]

100 (2) (*a*). If the Bill is returned to the Legislative Houses of the Region before the next dissolution of those Houses, then,

(i) at any time before such dissolution, there may be proposed for consideration in either House the required amendments and such other amendments (in this section referred to as "consequential amendments") as may be certified by the Legal Secretary of the Region to arise strictly from acceptance of one of the required amendments or to be made necessary by the time which has elapsed since the Bill was passed; and

(ii) if, before such dissolution, both Houses agree to the required amendments and to the same consequential amendments (if any), the Bill, with such amendments, shall be presented to the Lieutenant-Governor for assent and the provisions of Section 101 of this Order shall have effect accordingly.

(*b*) No amendment shall be proposed to the Bill in either House, and the Bill shall not be presented to the Lieutenant-Governor for assent, save as provided by this subsection.

[1] *Ib.* 95. [2] *Ib.* S. 97. [3] *Ib.* S. 98. [4] *Ib.* S. 99.

(3) If the Bill is returned to the Legislative Houses of the Region after the next dissolution of those Houses, or if the Houses fail to pass the Bill as provided in subsection (2) of this section before their next dissolution, the Bill shall lapse.

R.A.—The provisions of Ss. 101 and 102 as to assent by the Lieutenant-Governor, reservation and disallowance, are similar to those in respect of the Governor under Ss. 87 and 88.[1]

Joint Sittings of the Legislative Houses of Northern or Western Regions.—The sections dealing with this subject are as follows, and the exercise by the Lieutenant-Governor of his powers thereunder are in his discretion:[2]

104. (1) If, after a Bill has been passed by one House of the Legislature and sent to the other House (in this section referred to as " the second House ")—

(*a*) the Bill is rejected by the second House; or

(*b*) the Lieutenant-Governor is otherwise satisfied that there is no reasonable prospect of the Bill being passed by both Houses without amendment or with such amendments only as are agreed to by both Houses; or

(*c*) more than six months elapse from the date on which the Bill is sent to the second House (or, if the second House is not sitting on that date, from the date when it next sits thereafter) without the Bill being passed as aforesaid by both Houses;

the Lieutenant-Governor may, unless the Bill has lapsed by reason of a dissolution of the Houses, declare the Bill to be liable to the special procedure prescribed by this Part, and as from the date of such declaration the Bill shall be liable to such procedure.

(2) (*a*) The foregoing provisions of this section shall have effect with respect to a Money Bill as if the reference therein to a period of six months were a reference to a period of one month.

(*b*) In this subsection the expression " Money Bill " has the meaning assigned to it by Section 94 of this Order.

105. (1) When a Bill has become liable to the special procedure prescribed by this Part, the Lieutenant-Governor may, at any time before the next dissolution of the Houses, by message or Proclamation—

(*a*) give notice to both Houses of the Legislature of his intention to summon a joint sitting of representatives of both Houses for the purpose of deliberating and voting on the Bill; and

(*b*) require each House of the Legislature to elect representatives for the purpose aforesaid within such period (in this Part referred to as " the prescribed period ") as may be specified in such message or Proclamation.

(2) When the Lieutenant-Governor has issued with respect to a Bill any such message or Proclamation as is referred to in subsection (1) of this section, the following provisions of this section shall have effect, that is to say:—

(*a*) Neither House of the Legislature shall proceed further with the Bill.

(*b*) Each House of the Legislature may, within the prescribed period but before the next dissolution of the Houses, elect not more than twenty of its members (in this Part referred to as " delegates ") for the purpose specified in such message or Proclamation:

[1] *Ib.* Ss. 101, 102. [2] *Ib.* S. 103.

Provided that the House of Chiefs shall not so elect the Lieutenant-Governor.

(c) The Lieutenant-Governor may summon such delegates as have been elected in pursuance of this subsection to meet together in a joint sitting to deliberate and vote on the Bill at any time after the prescribed period but before such dissolution as aforesaid and, if he does so, the delegates shall meet accordingly and the provisions of Section 106 shall have effect.

Section 106 (1) provides for a joint sitting which is convened and presided over by the Lieutenant-Governor, and questions are decided by a majority of the delegates present and voting, the Lieutenant-Governor having a casting vote in event of an equality of votes.

Sub-section (3) of this Section further provides that:

(3) (a) The delegates present at the joint sitting may deliberate and shall vote together on the Bill as last proposd by the House in which it originated and upon such admissible amendments thereto as may be proposed in the joint sitting; and if the Bill, with such admissible amendments (if any) as are agreed to by the joint sitting, is affirmed by the joint sitting, the Bill as so affirmed shall be deemed thereupon to have been passed by both Houses of the Legislature and the provisions of this Order, and in particular the provisions relating to assent to Bills and disallowance of laws, shall have effect accordingly.

(b) for the purposes of this subsection—

(i) if the Bill, having been passed by one House of the Legislature, has not been passed by the other House with amendments and returned to the House in which it originated, there shall be admissible only such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(ii) if the Bill has been so passed and returned, there shall be admissible only such amendments (if any) as are made necessary by the delay in the passage of 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 Lieutenant-Governor as to the amendments which are so admissible shall be final.

Electoral Law.

Provisions in regard to this law are contained in Part 7 of Chapter II of the Order, and the distribution of seats is that each Province of the Northern Region and each Division of the Western and Eastern Region, is represented by 2 Elected Members in the respective Houses of Assembly, but in respect of the Eastern Region, it is provided that the members so representing the Division which includes the township of Calabar, at least one shall be a registered elector of that township. Sections 68 and 69 authorize the issue of Rules, Orders and Regulations.

Inconsistency between Regional and Central or Existing Law.— Section 107 of the Order provides that when any Regional Law is inconsistent with any provision of existing Nigerian Law, the Regional Law prevails, and the Nigerian Law, to the extent of the

inconsistency, is void. Where any Regional Law is inconsistent with any Central Law, then—

(*a*) if the Central Law was enacted before the Regional Law, the Regional Law shall prevail and the Central Law shall, to the extent of the inconsistency, be void; and

(*b*) if the Central Law was enacted after the Regional Law, the Central Law shall prevail and the Regional Law shall, to the extent of the inconsistency, be void.

Sections 8 to 12 deal with transitional matters, and the latter also provides for the removal of difficulties, while Ss. 167 to 173 cover the Public Service.

Amendment of the Order.

By S. 13 power to amend or revoke the Order is reserved to the King in Council, who has power to make laws from time to time for the peace, order and good government of Nigeria.

The Nigeria (Revenue Allocation) Order-in-Council, 1951,[1] provides for the allocation of revenue to the 3 Regions of Nigeria and prescribes the extent to which a Regional Legislature in Nigeria may enact laws with respect to taxation.

Governor's Letters Patent of December 5, 1951.—The Letters Patent constituting the office of Governor and Commander-in-Chief of the Colony of Nigeria make certain provisions for the government thereof, and contain relative points already referred to in the text of this Article.

The Royal Instructions to the Governor and Commander-in-Chief of Nigeria of November 27, 1951.—Certain relative points from this Document have been referred to in the text of this Article.

Royal Instructions to the Lieutenant-Governors of the Northern, Western and Eastern Regions of Nigeria of November 27, 1951, are also referred to in the Article in certain respects.

The Nigeria (Supplementary Provisions) Order-in-Council, 1951.[2] —This Order—

(*a*) constitutes the Office of Lieutenant-Governor of each of the three Regions of Nigeria;

(*b*) makes provision for the government and administration of the Protectorate of Nigeria and the Cameroons under United Kingdom Trusteeship; and

(*c*) corrects a reference in the Second Schedule to the Nigeria (Constitution) Order-in-Council, 1951.

This Order also confers upon the Governor and Commander-in-Chief of Nigeria the power to administer likewise the Government of the Protectorate and the Cameroons and the Privy Council of the Colony is also constituted the Privy Council for the Protectorate and the Cameroons.

Section 11 defines the Protectorate and the Cameroons as follows:

[1] S.I. 1951, No. 2127. [2] S.I. 1951, No. 1957.

11. (1) The Protectorate of Nigeria consists of the territories in West Africa, excluding the Colony, which are bounded on the south by the Atlantic Ocean, on the west, north and north-east by the line of the frontier between the British and French territories, and on the east by the territories known as the Cameroons.

(2) The Cameroons under United Kingdom Trusteeship consist of that part of the territories known as the Cameroons to which the Trusteeship Agreement approved by the General Assembly of the United Nations on the thirteenth day of December, 1946 (in this Order referred to as " the Trusteeship Agreement ") relates, namely that part thereof which lies to the west of the boundary defined by the Franco-British Declaration of the tenth day of July, 1919, and more exactly defined in the declaration made by the Governor of the Colony and Protectorate of Nigeria and the Governor of the French Cameroons which was confirmed by an exchange of notes between His Majesty's Government in the United Kingdom and the French Government dated the ninth day of January, 1931.

Section 12 provides that the Cameroons shall, subject to the provisions of the Trusteeship Agreement, be administered in such manner as may be provided by any Order of His Majesty in Council.

XXIII. THE NEW CONSTITUTION FOR SIERRA LEONE, 1951

BY THE EDITOR

IN the year under review in this Volume, the following constitutional and ancillary Instruments were put into force:

The Sierra Leone (Legislative Council) Order in Council, 1951,[1] The Sierra Leone Protectorate Order in Council, 1951,[2] The Sierra Leone Colony Letters Patent, 1951, of April 9, 1951, constituting the office of Governor; R.I. to the Governor, 1951; and The Legislative Council (Elections) Ordinance, 1951, an Ordinance which was passed on June 12 *idem*; the other Instruments taking effect on November 27 *idem*.

The following is a brief outline of these documents so far as they relate to the Governor, the Legislature, its members and the legislative power.

The Colony.

Governor.—This officer is also Commander-in-Chief and Vice-Admiral over the Colony and Protectorate of Sierra Leone.

Governor's Reserved Power.—S. 24 of the Order is the same as in the Gold Coast Constitution (*see* Article XXI hereof).

Executive Council.—The Executive Council is summoned by the Governor, who presides at its meetings, or in his absence such M.E.C. as he may appoint; failing him the senior member present.[3] This

[1] S.I. 1951, No. 611. [2] *Ib.* No. 610. [3] R.I., Cl. 8, 9.

Council consists of the Colonial Secretary, Chief Commissioner of the Protectorate, Attorney-General and Financial Secretary (all *ex officio*) and not less than 4 elected M.L.C.s as "Appointed Members" whom the Governor selects and appoints.[1] The elected M.L.C.s hold their seats for 5 years, which they vacate on resignation or ceasing to be Elected M.L.C.s or if absent from Sierra Leone without leave of the Governor, but they are eligible for re-appointment.

Should an M.E.C. vacate his seat on dissolution of the Legislative Council he retains his seat on the Executive Council until the first sitting of the new Legislative Council.[2]

The Governor may appoint Temporary Appointed M.E.C.s or suspend them from office. He also makes temporary appointments both as *ex officio* and "Appointed" as well as Extraordinary M.E.C.s.

The customary provisions are made as to the Governor's powers and his relation towards the Executive Council.[3]

Legislative Council.—This Council is summoned and prorogued by the Governor, and must be dissolved by him at the end of 5 years unless sooner dissolved.[4] It consists of the Governor, who is President; a Vice-President, the 7 *ex officio* M.E.C.s above-mentioned; 21 M.L.C.s made up as follows: 7 elected to represent each an electoral division in the Colony; 12 elected by the District Councils of the Protectorate; 2 nominated by the Governor and elected by resolution of the Protectorate, and 2 members nominated by the Governor and elected by resolution of the Protectorate Assembly, one being an African member thereof, both such nominated M.L.C.s holding office during H.M.s pleasure.

The Governor may, at any time for any particular purpose, appoint any person as an Extraordinary M.L.C., but without a vote in such Council.[5]

Qualifications & Disqualifications of M.L.C.s.—The qualifications of an elected M.L.C. are the same as under the Gibraltar Constitution (*see* JOURNAL, Vol. XIX, 237) except that in the case of the Freetown Wards, the property qualification may not be less than £250 and £100 for the Waterloo, etc., district.[6]

Disqualifications are: In addition to Nos. (1)-(7) (*see* Gold Coast Article XXI hereof) insufficient knowledge of English.

The provisions as to vacation of seat are the same as those under the Gibraltar Constitution (*see above*).[7]

Offices of Profit or "public office" (as it seems to be now the practice to refer to this subject in the Colonies) means an office of emolument in the public service, and "public officer" means the holder of any such office. Exceptions are: a Chief, a member of Tribal Authority, or of a Native Court, a person in receipt of a pension or

[1] *Ib.* Cl. 3. [2] *Ib.* Cl. 4. [3] *Ib.* Cl. 10, 11, 12. [4] S.I. 1951, No. 611, S. 29. [5] *Ib.* Ss. 5-9. [6] *Ib.* S. 10. [7] *Ib.* Ss. 12-14.

other like allowance in respect of service under the Crown; or any office declared by law not a public office.[1]

Government Contract.—The disqualification for either a Nominated or elected M.L.C. (excluding *ex officio* M.L.C.s) in regard to these Contracts is the same as that provided for in the Gibraltar Constitution (*see above*).

Franchise.—Under the Legislative Council (Elections) Ordinance, 1951, Ss. 4 and 5, this is enjoyed by every adult who is a British subject, or a British Protected person, of 24 months' residence in the Colony, is the owner or occupier (jointly or severally) of any property of the annual assessed value of not less than £6 or £5 in the Sherbro district, or has an income of at least £60 *p.a.*

Legislation.—The legislative power is the same as that provided for under the Gibraltar Constitution (*see above*).

The class of Bills which cannot be assented to by the Governor, without Instructions, are the same as those under the Gibraltar Constitution (*see* JOURNAL, Vol. XIX, 242) with the addition of Bills dealing with treaties; absent property owners; and transport and communications with the Dominions.[2]

Laws, Rights and Interests of Inhabitants.—Clauses 17 and 18 of the Royal Instructions provide that:

> 17. In the making of Ordinances, any native laws by which the civil relations of any native Chiefs, tribes or populations under Our protection are now regulated shall be respected, except in so far as the same may be incompatible with the due exercise of Our powers and jurisdiction or clearly injurious to the welfare of the said natives.

Clause 18 makes the same provision in regard to religious rights as those contained in the North Borneo Constitution (*see* JOURNAL, Vol. XIX, 105).

Private Bills.—Clause 19 contains similar provisions in regard to this class of Bill as that provided for under the Gibraltar Constitution.[3]

Presiding Member.—The Governor, if present, presides at meetings of the Legislative Council, but the Council may, by Resolution, supported by $\frac{2}{3}$ vote, elect a person to be Vice-President thereof to preside in his absence.[4] Should both be absent then the M.L.C. who stands first in the order of precedence[5] presides.

If a person on election as Vice-President is an M.L.C., he must, upon vacation of his seat as an M.L.C., cease also to be Vice-President, but if a person is not an M.L.C., at the time of his election as Vice-President, he ceases to be Vice-President should he do anything which, if he were an M.L.C., would render his seat vacant.[6]

All questions are determined by a majority of the M.L.C.s present and voting. The Governor has neither a deliberative, nor a casting

[1] *Ib.* S. 1.
[2] *See* JOURNAL, Vol. XIX. 242.
[3] S.I. 1951, No. 611, S. 19; R.I., Cl. 15. 16.
[4] S.I. 1951, No. 611, S. 15.
[5] *Ib.* S. 16.
[6] *Ib.* S. 15.

vote. The Vice-President, if an M.L.C. at the time of his election, retains only his deliberative vote but has no casting vote. Should, however, he not be an M.L.C., he has no vote whatever, but if an M.L.C. be acting as Deputy for the Governor, he, too, has only a deliberative vote. Should the voting be equal, the question is declared lost.

Procedure in the Council.—This is provided for in Ss. 20, 21, 22, 28 and 33, and the penalty for any unqualified person sitting and voting when so disqualified is liability to a fine of £20 for every day upon which he shall so sit or vote, recoverable by action in the Supreme Court at the suit of the Attorney-General.[1]

The Protectorate.

The Protectorate consists of Territories lying outside the Colony between 6° and 10° N.Lat. and 14° Long., commencing at the extreme southerly point of the Colony on the Anglo-Liberian Boundary (*vide* the delimitations by the Anglo-Liberian Conventions of 1885 and 1911). The Governor, etc., administers the government of the Protectorate, and his powers in the Colony apply also to the Protectorate in respect of which the Executive Council of the Colony also acts as Executive Council of the Protectorate.[2]

*XXIV. EXPRESSIONS IN PARLIAMENT, 1951[3]

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.

"brazen insolence". (76 *Union Assem. Hans.* 8177.)
"effrontery". (76 *Union Assem. Hans.* 8177.)
"Gadarene swine", if used against a Party. (484 *Com. Hans.* 2612.)
"political hypocrisy". (75 *Union Assem. Hans.* 5421.)
"That the Party is a subsidiary of the Anglo-American Corporation". (74 *Union Assem. Hans.* 3519.)
"wallowing in the gutter". (75 *Union Assem. Hans.* 4976.)

Disallowed.

"abuse". (74 *Union Assem. Hans.* 107.)
"a complete distortion of the facts". (75 *Union Assem. Hans.* 6582.)
"accusing another member of 'a plain lie'". (485 *Com. Hans.* 1958.)

[1] *Ib.* S. 33. [2] S.I. 1951, No. 610.
[3] *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; XVIII. 287; and XIX. 377.

" accusing members of bribery ". (74 *Union Assem. Hans.* 1479.)
" Blackmail ". (483 *Com. Hans.* 1794.)
" Bogus ", as applied to information furnished by Government. (*Bombay Leg. Assem.*)
calling another member a " pig ". (488 *Com. Hans.* 1267.)
" chiding ", as applied to a Minister. (*Bombay Leg. Assem.*)
" choke him off ", referring to a member. (1951 *S. Rhod. Hans.* 1576.)
" cut down the enormous amount of bumph ". (1951 *S. Rhod. Hans.* 876.)
" damned days' work in his life ". (493 *Com. Hans.* 766.)
" Deceive ", with reference to the Planning Commission's Report. (*Bombay Leg. Assem.*)
" despicable ". (75 *Union Assem. Hans.* 4786.)
" disgraceful conduct ". (75 *Union Assem Hans.* 4932.)
" disgraceful replies ". (486 *Com. Hans.* 632.)
" dishonest ". (75 *Union Assem. Hans.* 5033.)
" false ", as applied to a statement of a member. (*Bombay Leg. Assem.*)
" Gadarene swine ", if used against an individual. (484 *Com. Hans.* 2612.)
" hon. member has misrepresented the position ". (74 *Union Assem. Hans.* 3795.)
" hon. Minister is improving, even at this time of day ". (1951 *S. Rhod. Hans.* 1082.)
" hypocritical ". (75 *Union Assem. Hans.* 4763.)
" hypocritical ". (485 *Com. Hans.* 1495.)
" ignorance—abysmal ", " ignorance—colossal ", " ignorance—gross ", were held unparliamentary when applied to members Madras (Vol. IX L.A. Deb., pp. 784 & 787).
" insinuations of a dishonourable nature ". (75 *Union Assem. Hans.* 6608.)
" it is definitely a ' wonkie ' name ". (1951 *S. Rhod. Hans.* 905.)
" lack of guts ". (485 *Com. Hans.* 913.)
" low ". (75 *Union Assem. Hans.* 4427.)
" mean insinuation ". (75 *Union Assem. Hans.* 6608.)
" misleading the country ". (75 *Union Assem. Hans.* 5325.)
" misrepresentation ". (75 *Union Assem. Hans.* 5038.)
" scandalous ". (75 *Union Assem. Hans.* 6570.)
" sheer fraud and hypocrisy ". (75 *Union Assem. Hans.* 6519.)
" stealing funds ", as applied to a Minister. (*Bombay Leg. Assem.*)
" stooge ". (493 *Com. Hans.* 362.)
That a member should have his " throat cut ". (494 *Com. Hans.* 1430.)
" that is a lie ". (75 *Union Assem. Hans.* 4698.)
" they are Nazis ". (75 *Union Assem. Hans.* 5287.)

"to pursue a personal vendetta against someone". (485 *Com. Hans.* 982.)
"Totally untrue". (490 *Com. Hans.* 1676.)
"To say that members were Nazis". (74 *Union Assem. Hans.* 3242.)
"twisting certain passages". (75 *Union Assem. Hans.* 6554.)
"what a fool". (74 *Union Assem. Hans.* 2984.)
"You are a communist". (74 *Union Assem. Hans.* 1204.)

XXV. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1950 and 1950-51

COMPILED BY THE EDITOR

THE following Index to some points of Parliamentary procedure, as well as Rulings by the Speaker and Deputy Speaker of the House of Commons given during the First and Second Sessions of the XXXIXth Parliament of the United Kingdom of Great Britain and Northern Ireland (14 Geo. VI), are taken from the General Index to Volumes 472 to 491 of the Commons *Hansard*, 5th series, covering the period March 1, 1950, to October 4, 1951.

The respective volume and column reference number is given against each item, the first group of figures representing the number of the volume, thus—"472–945" or "491–607, 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.

At the end of the Rulings for 1950 and 1950-51 a Guide-Word Index is given to the main headings of the Rulings appearing in all the XX Volumes of the JOURNAL and covering Volumes 259 to 491 of the Commons *Hansard* for the period November 3, 1931, to October 4, 1951.

Address.
—in Reply
—calling of *amdts.* to, 480–307 to 9.

Adjournment.
—*of House*
—business cannot be transacted when question for, is before House, 477–645.
—cannot be moved to secure attendance of a Minister, 475–318.

Adjournment (*continued*):
—debate, *see* that Heading.
—for discussion of, under Rule 9, 474 – 1154,5.
—must be moved by Government, 489 – 720.
—*of House* (*Urgency*) *Motion for*
—*refused*
—disappearance of Prof. Pontecorvo, 478 – 2492.
—Egypt Canal Zone: not definite (rule applies to a single definite act) and Motion cannot be moved to obtain information, 486 – 661.
—export of arms to Egypt: late, notice already given of future debate, 481 – 343.
—Fishing Industry and dumping of Foreign Imports, 475 – 846.
—Korean Republic: invasion of, 476 – 2293.
—proposed Japanese Peace Treaty: not a single definite act, Treaties not discussed before made and Treaty not before House, 488 – 1020.
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Guide-Word Index to Rulings of Speaker and Deputy Speaker at Westminster in this and previous Volumes of the JOURNAL.—The ideal thing, of course, would be, at the end of stated periods of years, to assemble all references to these Rulings in one Index, but the labour and expense involved would be great, as 168 pages of the JOURNAL have been devoted to this subject in Volumes I to XIX inclusive, added to which are the pages under that heading in this Volume. Moreover, the lists of these Rulings given in the JOURNAL are in many cases only a guide to the particular circumstances as fully reported in the Commons *Hansards*, a complete and up-to-date set of which should be in every Overseas Library of Parliament.

However, the following Guide-Word Index is offered for more ready reference to such Rulings.

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[1] *See also* 123 *Com. Hans.* 4, ss. 309-311; 93 *ib.* 5, s. 1963; 159 *ib.* 293.

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XXVI. APPLICATIONS OF PRIVILEGE, 1950-1951

At Westminster.

Alleged disclosure of a constituent's letter to a Member.—On March 8,[1] in the House of Commons, Mr. Sydney Silverman raised the case of a clergyman, the Reverend O. Fielding Clarke, who had written to him to complain that "a letter of mine to my own Member

[1] 485 *Com. Hans.* 5, ss. 675-688.

of Parliament, protesting against German re-armament, was sent on, without my being asked, to my Bishop, who wrote me an impossible letter saying that he thought I should resign".

Mr. Silverman suggested that the correspondence of a constituent was privileged matter, and that to disclose it in a manner prejudicial to the writer was to impede or obstruct Parliament in the performance of its duties, in the manner suggested in Erskine May.[1]

The letter was delivered in and the passages complained of were read by the Clerk. The Speaker pronounced that no precedent existed for this complaint, but that he could not rule that it contained no *prima facie* breach of privilege. Mr. Rodgers, the Member whose conduct was complained of, was asked whether he had any statement to make, but he replied that he had not had any notice that the matter was to be raised. It appeared that a letter had been sent to him but had not reached him. Mr. Silverman then moved "That the matter of the complaint be referred to the Committee of Privileges," upon which a very discursive debate began, and Mr. Churchill moved the adjournment of the debate.

It was strongly urged that Mr. Speaker should rule that the matter either was or was not a *prima facie* case of breach of privilege, and he agreed to do so on a subsequent day. The motions were then withdrawn.

On Tuesday, March 13,[2] Mr. Speaker informed the House that he had further considered the complaint of breach of privilege raised on the previous Thursday by Mr. Silverman. He said that he had discovered that the whole matter had been discussed in the *Daily Worker* on the previous Tuesday; that the complaint had not therefore been made to the House at the earliest moment possible, and that it was not accordingly proper to be entertained. A long discussion then ensued. Mr. Silverman maintained that the Speaker's original ruling (that the matter could not be ruled not to be a *prima facie* case of breach of privilege) having been given, could not be withdrawn, even though it was in a negative form. Mr. Speaker, however, said that he had considered the letter and decided that there was no *prima facie* case. The Leader of the House suggested that Mr. Silverman could, and should, put down a motion to refer the matter to the Committee of Privileges even though he had not the right of priority to which the Speaker's ruling of a *prima facie* case of breach of privilege would have entitled him. Mr. Rodgers, the member implicated, made a long statement, and read out the letters concerned, and the Leader of the House agreed to give a motion put down by Mr. Silverman an early chance of debate.[3]

On Wednesday, March 21,[4] Mr. Silverman moved:

That the matter of the complaint of the Hon. Member for Nelson and Colne concerning the conduct of the Hon. Member for Sevenoaks in handing over to the Bishop of Rochester a letter he had received from his constituent, the

[1] XV. 109. [2] 485 *Com. Hans.* 5, ss. 1297-1316. [3] *Ib.* 1297-1316.
[4] *Ib.* 2491-2544.

Rev. O. Fielding Clarke, M.A., B.D., be remitted to the Committee of Privileges.

He argued that the maintenance of the confidential nature of communications from constituents to their members was essential to the conduct of the business of the House. Against this, Mr. Churchill, the Leader of the Opposition, argued that the Speaker had already ruled that no *prima facie* case existed, and the Privilege existed for the protection of members of the House and not for the protection of the general public. The Leader of the House pointed out that only the House could determine a question of privilege, and that the Speaker's ruling governed only the precedence of business. The motion was defeated on a division. Ayes, 255; Noes, 284.[1]

Alleged discussion of matters sub judice in the House.—On Monday, March 12,[2] in the House of Commons, Mr. Ian Orr-Ewing raised the case of a discussion in a B.B.C. radio programme of the case of alleged privilege raised on the previous March 8. He submitted that, as a final ruling from the Chair on this matter was pending, the matter was *sub judice*, and the discussion of it was a breach of privilege. He read various extracts from a recording of the broadcast. Mr. Speaker thereupon ruled that the matter constituted a *prima facie* case of breach of privilege, and Mr. Orr-Ewing moved that the matter be referred to the Committee of Privileges. After some discussion this was agreed to.

The Committee reported on April 4[3] that as the principle which governed such cases in the courts of justice was whether or not the discussion tended to obstruct the course of justice, and as in this case they considered it did not, it did not in their view constitute a breach of privilege. No further action was taken.[1]

Alleged case of contempt.—On Wednesday, March 14,[4] in the House of Commons Mr. Manuel rose in his place to complain of a speech made by a member, Mr. Boothby, in his constituency, in which he asserted that the Conservative plan was to drive the Government out of office by the use of parliamentary procedure to cause physical exhaustion. Mr. Speaker ruled that no *prima facie* case of breach of privilege had been made out.[1]

Alleged case of libel upon a Member.—On Monday, March 19,[5] in the House of Commons, Mr. Silverman rose to complain of a letter addressed to him in scurrilous terms by the secretary of an organization known as Clan-Briton. The letter was handed in to the Table, and the Deputy Speaker Ruled that a *prima facie* case of breach of privilege had been made out. The matter was then referred, on a motion by Mr. Silverman, to the Committee of Privileges. The Committee reported on April 4[6] that the letter complained of did not in their opinion constitute a reflection upon Mr. Silverman *in his*

[1] Contributed by the Clerk of the House of Commons.—[Ed.]
[2] 485 *Com. Hans.* 5, s. 1064. [3] H. C. 149 (1951).
[4] 485 *Com. Hans.* 5, ss.1546-8. [5] *Ib.* 2110-2111. [6] H.C. 149 (1951).

capacity as a member of the House, and was not therefore a breach of privilege. No further action was taken.[1]

Issue of subpœna upon a Member of the House.—On April 13,[2] in the House of Commons, Mr. Sorensen rose and complained that he had received a subpœna to attend as a witness in the High Court on April 23, from one Mr. Wicks, who objected to various parliamentary questions which he had put down about his pro-Nazi activities in 1939. Mr. Sorensen stated that he had no knowledge whatever about the case for which he was served with a subpœna, and that he assumed that it was an attempt to prevent him from attending to his parliamentary duties. He asked the House to protect him, adding that he had not appealed to the High Court to set aside the subpœna, as he might seem to be prejudicing the paramount right of the House to the attendance and service of members. Mr. Speaker agreed to give the matter consideration. (The man Wicks had tried to harass Mr. Sorensen in many ways since 1939.)

On April 19 Mr. Speaker announced that he had written to the judge concerned, who had replied that he agreed that Members of Parliament were exempt or could be exempted from attending as witnesses during the session of Parliament. He informed the Speaker that he proposed to dispense with Mr. Sorensen's attendance at the court on April 23, but would inquire if his evidence was necessary or desirable. If it appeared to be necessary, he would communicate with him again, and seek to arrange that the testimony should be given at some time which would not conflict with Mr. Sorensen's parliamentary duties.[3, 1]

Alleged victimization of persons giving information to Members.—On April 26,[4] in the House of Commons, Mr. Geoffrey Cooper complained that two men who had given him some information on the conduct of an international signals organization had been dismissed from the service of the British Overseas Airways Corporation. He alleged that their dismissal was in consequence of giving him information and that this tended to discourage the giving of information to members of the House. Mr. Speaker Ruled that the member had not been prevented from carrying out his parliamentary duties in any way, and that there was, therefore, no *prima facie* case of breach of privilege.[1]

Alleged libel on the Chairman of Ways and Means.—On Monday, June 18,[5] in the House of Commons, Mr. Poole rose to complain of a speech of Lady Mellor, wife of a member, given at a Conservative garden party and reported in the *Sutton Coldfield News* of Saturday, June 16. The passage complained of, which he read to the House, read as follows:

The other day Major Milner (Deputy Speaker) made a ruling, and though he was within his rights, Lady Mellor thought that, in the present circumstances,

[1] Contributed by the Clerk of the House of Commons.—[Ed.]
[2] 486 *Com. Hans.* 5, s. 1335. [3] *Ib.* 1973. [4] 487 *Com. Hans.* 5, ss. 576-580.
[5] 489 *Com. Hans.* 5, ss. 36-50.

it was a very deplorable one. He refused to permit certain amendments to the proposals to increase certain taxes to be discussed which normally would have been discussed. It seemed a particularly bad thing when a government with such a small majority was in power refused to admit full and free discussion.

Mr. Poole suggested that these remarks criticized the rulings of the Chairman of Ways and Means, and implied that he was not impartial. The newspaper being brought up to the Table, Mr. Speaker Ruled that the complaint was of the kind to which priority should be given over the Orders of the Day. Mr. Poole then moved that the matter of the complaint be referred to the Committee of Privileges. A long discussion ensued, upon the nature of Mr. Speaker's ruling. Under pressure from the Opposition, Mr. Speaker agreed with reluctance to change the form of his ruling and say that there was a *prima facie* case of breach of privilege, although he observed that this form only dated from 1936 and appeared to involve to some extent pre-judging the issue. The motion was then agreed to.

The Committee reported on July 18,[1] "that while they were not prepared to go so far as to say that any comment made upon the Chairman in his conduct of the business of the House, even though such comment be adverse, is necessarily a breach of privileges of the House, undoubtedly a comment upon the conduct of the Chairman with regard to the business of the House which would be construed reasonably by those who hear or read such comment as charging him with partiality is a breach of the Privileges of the House. . . . Any comment of this kind necessarily tends to lower the House in public esteem, and therefore to interfere with the full and proper discharge of its functions. Your Committee therefore report that in their opinion the words spoken by Lady Mellor constitute a breach of privilege. . . . However, they consider that in all the circumstances the House would best consult its own dignity by taking no further action in the Matter."

The Report of the Committee was considered by the House on August 1, when there was a long debate, the opposition speakers putting forward the view that the opinions expressed in the Report would tend unduly to hamper freedom of comment in the Press. The Report was finally agreed to.[2, 3]

Alleged disclosure of document submitted to Select Committee.—On June 27,[4] in the House of Commons, Mr. Alexander Anderson rose to complain of an article in the *Daily Telegraph* of that date referring to the work of the Select Committee on Estimates, of which he was the Chairman. The article, he said, clearly referred to a memorandum which had been submitted to the Select Committee and in connection with which the Committee had not yet reported. He

[1] H.C. 235 (1951).
[2] 491 *Com. Hans.* 5, ss. 1540-1583.
[3] Contributed by the Clerk of the House of Commons.—[ED.]
[4] 489 *Com. Hans.* 5, s. 1381.

submitted that this contravened the Resolution of the House of April 21, 1837,

That according to the undoubted Privileges of this House . . . documents presented to any . . . Committee . . . which have not been reported to the House, ought not to be published by any . . . person.

The newspaper was delivered in, and Mr. Speaker Ruled that there was a *prima facie* case of breach of privilege. Mr. Anderson then moved that the matter be referred to the Select Committee on Estimates to deal with. There was considerable opposition to this, but the motion was carried, on a division. (Ayes, 283; Noes, 159.)[1, 2]

The Select Committe on Estimates reported, on July 11,[2] the relevant facts of the case. The document had previously been circulated to a large number of persons by the Association of Municipal Corporations, which submitted it to the Committee. The persons concerned were automatically supplied with all the minutes of the Association. It was supplied to the Press in the same way as many similar documents had been supplied in the past. No further action was taken in the matter.[3]

Alleged interference with access to the House, and service of a Writ of Summons upon a Member.—On July 16, in the House of Commons, Mr. John Lewis put down a motion,

that a Select Committee be appointed to inquire into the obstruction by the Police of Mr. John Lewis, Member for Bolton West, when on his way to this House on July 3, 1951, and to report thereupon to the House.

On July 18,[4] Mr. Lewis rose to complain that he had, that morning, been served with summonses to attend a Magistrates' Court in connection with the incident mentioned in the motion. He explained that on July 3, having received an urgent call from the Whips to attend the House for an expected division, he set out in his car and was held up by the Police at one point and diverted to another route, as a result of which he was late. He said that he raised the matter in the Speaker's Office; that Mr. Speaker had eventually informed him that it was too late to raise the matter in the House, and that the only course open to him was to put down a motion on the matter. He had put down a motion and he submitted that the service of the summonses was therefore a breach of privilege. Mr. Speaker Ruled that no *prima facie* case had been made out.

On July 24,[5] a motion was moved by Mr. Paget in the following terms:

That the complaint (July 18) of the Hon. Member for Bolton West be referred to the Committee of Privileges.

He maintained that a question of the Privileges of the House of

[1] *Ib.* 1393. [2] H.C. 227 (1951). [3] Contributed by the Clerk of the House of Commons.—[ED.]
[4] 490 *Com. Hans.* 5, ss. 1246-1252. [5] 491 *ib.* 377.

Commons was involved, and that if it were not dealt with by the House, the Magistrates' Court, which was to consider the case of the Police against Mr. Lewis, would be in the position of having to decide upon the limits of a Parliamentary Privilege. After some debate, the motion was carried.[1]

The Committee reported on July 26[2] they had found some difficulty in deciding the exact scope of the matter which had been referred to them, but eventually decided to examine the whole circumstances of Mr. Lewis's conflict with the Police on July 3. They found that there was no obstruction of the member in his progress towards the House of Commons, any delay being due to congestion of traffic. They did not consider that this case came within the orbit of the sessional order, which instructs the Metropolitan Police to "take care that during the Session of Parliament, the passage through the streets leading to this House be kept free and open, and that no obstruction be permitted to hinder the passage of members to and from this House". They did not believe that the Order could extend as far as the Victoria Gate in Hyde Park, where the incident occurred. No breach of privilege was, therefore, caused by obstruction by the Police. As regards the issue of the summonses they pointed out that in the words of a previous Report from the Committee of Privileges, which was accepted by the House,[3] "a Member of Parliament as such is not privileged from service of process", although such service within the precincts of the Palace of Westminster at certain times may constitute a breach of privilege. The member had received the statutory intimation of intention to prosecute before he put down his motion, and the issue of the summonses was in execution of the previously expressed intention.

Moreover, placing motions on the Order Paper does not bring their matters into the category of matters *sub judice*. If, in such circumstances, the service of summonses were to constitute a breach of privilege, then a member could protect himself against any service of process for criminal acts by placing a motion on the Order Paper. They therefore did not consider that the issue of the summonses constituted a breach of privilege.

The Report was considered in the House and agreed to without a division on August 1.[4, 5]

Libel on the Chairman of a Select Committee.—The Second Special Report of the Select Committee on the Kitchen and Refreshment Rooms (House of Commons)[6] published on July 3, complained that the *Daily Express* of July 9 contained the following letter under the heading "Co-op. smokes only in the House now":

Since the catering here is now under a Co-op. Chairman, W. Coldrick, M.P. (Socialist, Bristol North-East), and the prices have gone up and for three

[1] *Ib.* 377-396. [2] H.C. 244 (1951).
[3] *See* JOURNAL, Vol. XV. 270. [4] 491 *Com. Hans.* 5. ss. 1527-1540.
[5] Contributed by the Clerk of the House of Commons.—[ED.]
[6] H.C. 113 (1951).

weeks there have been no cigarettes on offer in this Palace except Co-op. brands, I think that M.P.s and ourselves at the end of the session ought to get a " divi ".

William Barkley,
Press Gallery, House of Commons, S.W.1.

The Report adduced facts to show that the allegation in the letter was untrue, and remarked that as the letter clearly implied that Mr. Chairman of a Select Committee was using his influence unfairly to further his personal interests, the Committee felt bound to report the matter for the judgment of the House as seriously affecting its Privileges.

On July 24[1] Mr. Coldrick, the Chairman of the Select Committee, moved, " That the Second Special Report from the Select Committee on Kitchen and Refreshment Rooms (House of Commons) be now considered." This was agreed to without debate. Mr. Coldrick then moved, " That the said Report be referred to the Committee of Privileges."

To this the Leader of the House moved an amendment to leave out all the words from the first " the " and add " letter in the *Daily Express* newspaper of July 9, by Mr. William Barkley, constitutes a gross libel on the Chairman of the Select Committee and a contempt of this House ".

Upon this a prolonged and acrimonious debate developed, some members suggesting that the occasion was too trivial to merit the condemnation of the House, others that the person specified in the motion was to be condemned unheard, others objecting that no punishment was proposed to be applied in pursuance of the Resolution. Eventually the Closure was applied, the amendment carried, and the motion, as amended, carried.

The Leader of the House then moved, " That Mr. William Barkley do attend this House this day." A prolonged debate again ensued, members objecting to the lateness of the hour (3.0 a.m.) and protesting against any sentence being pronounced in the then tumultuous atmosphere of the House. The debate was accordingly adjourned to the sitting of the House later that day.[2]

In the afternoon of July 25,[3] when the Order was read for resuming the adjourned debate, Mr. Speaker read a letter from the offending journalist expressing his regret and apologies that his letter should have given offence and asserting that his words were never intended to convey the implication read into them. Three members, including the Leader of the House, then rose severally to suggest that the apology should be accepted and no further action taken. Other members were obviously of the contrary opinion, but when they attempted to resume the debate, Mr. Speaker pointed out that the Leader of the House had just announced his intention of fixing no day for the resumed debate, and that there should not therefore be any debate.

[1] 491 *Com. Hans.* 5, s. 396. [2] 491 *Com. Hans.* 5, ss. 396-426. [3] *Ib.* 593.

The ruling caused considerable anger, but Mr. Speaker and the Leader of the House emphasized that if, when the Order of the Day was read out, no one said "Now" the House must pass to the next Order. After some heated exchanges, the matter ended.[1, 2]

General.—It will be observed that during the year, Mr. Speaker made several attempts to avoid the practice of ruling in every case that there is or is not a *prima facie* case of breach of privilege in a matter complained of. It is a practice which dates from about 1934, but it appears to be accepted as the invariable rule by many members.

The objection to it is principally that it is a misapplication of the legal phrase "*prima facie* case". Only the House itself can determine whether a particular act is or is not a breach of privilege, where there is the slightest doubt of the application of the law of privilege. Consequently Mr. Speaker could only rule that there was a *prima facie* case of breach of privilege where there existed a precedent exactly in point, which very seldom happens.

The Committee of Privileges may sit to ascertain the facts of a case, and to report its opinions on the law of privilege as it affects the case. The House itself finally determines the application of the law of privilege. If Mr. Speaker has ruled that there is a *prima facie* case of breach of privilege, and the Committee or the House should come to the conclusion that although the facts are as originally alleged, the law of privilege has not been infringed, the judgment of the Chair is to a certain extent impugned. Similarly, if Mr. Speaker should rule that no *prima facie* case of breach of privilege exists, and the House, on a motion, should resolve that the law of privilege has been infringed, the judgment of the Chair has been contradicted. Only if the Committee of Privileges, or the House, were to ascertain that the facts were not as originally presented would they resolve in a different direction from a ruling of the Chair that a *prima facie* case of breach of privilege did or did not exist, without weakening the authority of the Chair.

When, in 1951, however, Mr. Speaker attempted to use a more appropriate formula, such as, that the case appeared to be of such a nature that it should have precedence over the Orders of the Day, he was pressed by members on both sides of the House to follow the recent practice, and at length consented to rule that there was or was not a *prima facie* case of breach of privilege.[2]

Union of South Africa.

Reflections on Character and Proceedings of House.—On January 24, 1949, in the Senate, Senator Tucker, on a Question of Privilege, drew the attention of Mr. President to a sub-leader in *Die Burger* of the same date, as containing reflections on the character and Proceedings of this House.

[1] *Ib.* 593-600. [2] Contributed by the Clerk of the House of Commons.—[ED.]

The sub-leader in question having been read and the newspaper in which it was contained having been handed in, after debate, Mr. President said:

It is the recognized practice that a Senator who desires to raise a question of a breach of privilege must do so at the earliest possible moment after the occurrence. In this case, however, circumstances prevented the Honourable Senator from complying with that practice.

The alleged breach of Privilege would be classed by May[1] as being in the nature of a libellous comment on the character or proceedings of Parliament. I have read the Article in question carefully and asked myself whether it can be judged to be libellous, in other words, is it probable that a Committee of Inquiry after investigation would come to the conclusion that the article constitutes libel? My reply to this must be in the negative and that a breach of the Privileges of this House has not occurred, although I wish to state emphatically that it must not be inferred that I am in agreement with any of the allegations made in the article concerned. In this connection I may say I agree with the comment made in Kilpin's Parliamentary Procedure:[2] "such matters . . . are best left to the verdict of public opinion. If pressed they would tend to impair rather than enhance the dignity of Parliament." It seems to me that were it to be conceded that the article complained of should be judged to be a breach of Privilege, newspapers would be unnecessarily circumscribed in their desire to offer legitimate criticism of matters pertaining to the public affairs of this country.[3]

XXVII. REVIEWS

Parliament: A survey.[4]—Lord Campion, formerly the Clerk of the House of Commons, now the Clerk of the Consultative Assembly of the Council of Europe, is the Editor of this collection of essays by the under-mentioned authorities, who were invited by the Department of Extra-Mural Studies, University of London, to join a Group to study Parliamentary Government in Britain. Its objects were:

(1) to promote discussion among a group of experts;
(2) to formulate material as a basis of a possible course of lectures to follow the meetings of the group; and
(3) to publish the results of the Study, if desired, and practicable.

The 12 Chapters of the book deal with the following subjects by the authors whose names are given against them:

"Parliament and Democracy", by Lord Campion, G.C.B., D.C.L.

"The Nature of British Parliamentary Government", by the Rt. Hon. L. S. Amery, C.H., D.C.L., a life-long Parliamentarian, who has held several important Portfolios in the British Cabinet.

"Comparison with American and French Parliamentary Systems", by Professor D. W. Brogan, D.E.S.L., LL.D.

[1] XI. Ed. 76-78.
[2] At p. 122. [3] We regret that the inclusion of this instance in Volume XVIII was overlooked.—[Ed.]
[4] *Parliament: A Survey*, by Lord Campion and Others. (George Allen and Unwin, London, 1952. 22*s*. 6*d*.)

"Dangers of a Supreme Parliament", by J. J. Craik Henderson, ex-M.P.

"Cabinet and Parliament", by Sir Arthur Salter, G.B.E., K.C.B., now Secretary of State for Economic Affairs.

"Parliament in Relation to the Civil Service", by H. E. Dale, C.B., a prominent member of the British Civil Service.

"Parliamentary Procedure, Old and New", by Lord Campion.

"The Organization of British Parties", by Ivor Thomas, M.P.

"A Second Chamber", by F. W. Lascelles, C.B., M.C., Clerk-Assistant of the Parliaments at Westminster.

"The Courts and the Constitution", by Professor E. C. S. Wade, LL.D., Downing Professor of the Laws of England at Cambridge University.

"Delegated Legislation", by Sir Cecil T. Carr, K.C.B., Q.C., LL.D., Counsel to the Speaker and the noted British authority on this subject.

"Parliamentary Control over the Nationalized Undertakings", by Sir Arthur L. Goodheart, K.B.E., Q.C., LL.D., Professor of Jurisprudence, Oxford University; and

"The Future of British Parliamentary Government", by G. M. Young, C.B., D.Litt.

After the recital of the qualifications of these illustrious authorities, it is scarcely necessary to say that they have submitted the various aspects of the subject to the closest scrutiny from its 12 different standpoints. The book is undoubtedly a comprehensive survey of Parliament, which should be in the hands of every Clerk-at-the-Table.

Companion to the Standing Orders of the House of Lords on Public Business (1952 Ed.).[1]—This revised Edition takes the place of that issued in 1949. Both historically and technically this is a very useful book of reference not only for Upper but also for Lower Houses of Overseas Parliaments.

Although, in addition to the transaction of Judicial Business, there is much in the forms and practices of the House of Lords which is peculiar to that Chamber, especially in regard to Peerage ceremonial, yet the adoption by Overseas Second Chambers of much of the simpler procedure of the House of Lords has much to commend itself to the freer transaction of business in the calmer and less political atmosphere of a House of Review.

Even in smaller Overseas Lower Houses, especially those single Chambers under "Representative Government", some of the simpler forms of House of Lords procedure might also be found more satisfactory than are attempts to transplant the full procedure of the House of Commons, necessary though much of it is in those Overseas Lower Houses of large membership, controversial legislation and much business to get through in a limited time.

[1] Laid on the Table by the Clerk of the Parliaments.

A most useful practice of the House of Lords, the financial powers of which are much curtailed, which will interest many Second Chambers Overseas, is that provided by S.O. XXXVII, which gives that House the opportunity to negative the *C.W.H.* stage of Bills (generally Consolidated Fund Bills) commonly committed upon Motion at 2 *R.*

The practice in the Lords, of Peers having the opportunity to lodge Protests against any votes of that House has not been widely adopted by our Overseas Second Chambers.[1]

Another useful practice of both Houses at Westminster is that by which much Private Bill and consolidation legislation is by general agreement initiated in the Lords with only formal consideration in the Commons, thus saving the time of the latter House for other business.

In regard to the amendment of the practice in the case of equality of votes dealt with in the Editorial Note in this issue of the JOURNAL, the 1952 Edition of the Companion incorporates the new Standing Order (Equality of Votes on a division) and the following are the references thereto:

At p. 31.—The question put on an amendment to a Motion is: "That this amendment be agreed to", and should the voting in a division thereon be equal, then the amendment is lost.

At p. 36.—The new S.O. is given.

At p. 40.—If there be an equality of votes on a Motion for 2 *R.*, or on an amendment to such Motion, the Motion for 2 *R.* is carried and the amendment thereto is defeated.

At p. 47.—An equality of votes on a division on any of the following questions:

"That this House doth agree (or disagree) with the Commons in their amendment;

"That this House doth agree with the Commons in their amendment as so amended; or

"That this House doth agree with the Commons in their amendment but doth propose the following amendment in lieu thereof:"

—results in the retention of the Commons amendment.

The Companion gives, at ready hand, the several forms of Address and their presentation, the procedure at the Opening of Parliament, whether by the Sovereign in person or by Commission, and in connection with the election by the Commons of their Speaker, as well as with intercameral matters. The Companion is therefore a very useful and handy manual of procedure.

Almost in Confidence.[2]—This book is a most readable account of the political reminiscences of a prominent and experienced South African Journalist-M.P., but as the JOURNAL and the Society have

[1] *See* JOURNAL, Vol. XIX. 390.

[2] *Almost in Confidence*, by Arthur E. Barlow. (Juta, Cape Town, 1952. 21s.)

impartially to serve those of all Parties, no reference can be made to politics in this JOURNAL.

So far as giving a review of Mr. Barlow's book is concerned, the reviewer is confined to references to constitutional and procedural matters.

The book contains some interesting references to the unicameral and popularly elected Volksraad—the Legislature of the late Orange Free State Republic—a form of government superseded by the Constitution of the Orange River Colony inaugurated after the South African War of 1899-1902.

It was the custom in the Volksraden of the Transvaal Republic for members to wear black broadcloth and white bow-ties.

By law, every member was compelled to attend the sittings of this Body. Any absences had to be explained in the House, and if a member was unable to satisfy the House with good reasons therefor, he was officially reported to his constituency by the Volksraad.

Members also had to attend sittings bare-headed. Hats could not be worn even when a member walked about the House. A member had to resign his seat to the President of the Republic. The proceedings of the Chamber were presided over by a Chairman and Vice-Chairman and Sessions were opened with Prayer by a Dutch Reformed Church Predikant. There were no daily Prayers. The President of the Republic was allowed in the House after the Chairman or Vice-Chairman had addressed members, whereupon the latter appointed a Commission of 2 to bring in His Honour, who sat on the dais next to the Chairman and could take voteless part in debates. It was only, however, on special and rare occasions that the President visited the House. The hours of sitting were 9 to 12 a.m. and 2 to 4 p.m. There were no Standing Select Committees, but special Commissions of members were appointed to investigate Bills or Motions.

A member, unless granted leave not to do so by the Chairman, had to be present at the voting, which was compulsory. A member guilty of unruly conduct was, for the first time, called to order by the Chairman. On the second occasion, the fact was noted on the Notulen (Minutes) of the House for that day. Should he persist in his guilt, he was suspended for the rest of the Session by the Police, and the Landdrost (Magistrate) of Bloemfontein (the Capital) was responsible by law for supplying police protection.

At the end of the Session the Chairman, who was the Leader of the House (for there were no political Parties) gave a short résumé of the work of the Session, expressed his opinion thereon, and requested the President to say a few words of farewell and thanks to members.

There was no *Hansard*, but short reports of every speech appeared in the Notulen of the previous day. These were read each day, and when passed were not alterable. The Author, however, remarks that the "Model Republic" never got much further than the model.

Mr. Barlow has given a most interesting account of his experiences

as a member of the Parliaments both of the Orange River Colony and the Union Parliament, and his book is a valuable contribution to the political life of South Africa.

Several spelling and other inaccuracies are noted which will doubtless be corrected in future editions.

XXVIII. 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, III, IV, V, VI, VII, VIII, IX, X, XI-XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX 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 1950.

Campion, Lord, and others.—Parliament: a Survey. (Allen and Unwin.) 22*s.* 6*d.*

Campion, Sir Gilbert.—An Introduction to the Procedure of the House of Commons. (Macmillan.) 18*s.* (New reprint.)

Dawson, Robert MacGregor.—Democratic Government in Canada. (Cumberlege.) 22*s.* 6*d.*

Findlay, Bruce Allyn, and Findlay, Esther Blair.—Your rugged Constitution, how America's House of Freedom is planned and built. (O.U.P.) 24*s.*

[1] 123-6. [2] 137, 138. [3] 152. [4] 222.

Holcombe, Arthur N.—Our more Perfect Union. From Eighteenth-Century Principles to Twentieth-Century Practice. (Cumberlege.) 40*s.*

House of Lords: Companion to the Standing Orders on Public Business, 1952.

Hoyt, Robert S.—The Royal Demesne in English Constitutional History: 1066-1272. (Cumberlege.) 28*s.*

Humberstone, T. Lloyd.—University Representation. (Hutchinson.) 10*s.* 6*d.*

Jennings, Sir Ivor.—Cabinet Government. 2nd Ed. (Cambridge University Press.) 30*s.*

Joshi, G. N.—The Constitution of India. (Macmillan.) 12*s.* 6*d.*

Lapsley, Gaillard I.—Crown, Community and Parliament in the later Middle Ages. Studies in English Constitutional History. Ed. by Helen M. Cam and Geoffrey Barraclough. (Blackwell.) 25*s.*

Law, William.—Our Hansard. (Pitman.) 8*s.* 6*d.*

Ridges, E. W.—Constitutional Law. 8th Ed. By G. A. Forrest. (Stevens.) 42*s.*

Robson, William A.—Justice and Administrative Law. A Study of the British Constitution. 3rd Ed. (Stevens.) 30*s.*

Wade, E. C. S., and Phillips, G. G.—Constitutional Law. 4th Ed. By E. C. S. Wade. (Longmans.) 35*s.*

Ward, Norman.—The Canadian House of Commons Representation. (Cumberlege.) 37*s.* 6*d.*

Wheare, Kenneth Clinton.—Modern Constitutions. (O.U.P.) 6*s.*

XXIX. THE FOUNDER'S FAREWELL

THE year 1953 will, by God's Good Grace, mark my 80th birthday. It is, therefore, in the best interests of the Society and its JOURNAL that I should make way for younger blood.

It is not without a feeling of sadness that I relinquish my duties as Secretary-Treasurer of the Society and Editor of its JOURNAL, after these 20 years of honorary service, for they have been full of interest. Moreover, I have been brought into contact, in many cases close and intimate, with those engaged in the same profession in which my own official life has been spent.

The publication of this Volume also registers our JOURNAL'S XXth milestone. At first the Society had to feel its way on slender revenue, its sales and membership were small and its usefulness to our members had still to be proved. In those early days, we were not without critics among our members. There was the problem of our scattered community, the impracticability of a governing executive committee and the difficulty of members periodically meeting in Conference for discussion on subjects of common interest. However, after personal

contact, on their home ground, with the Clerks-at-the-Table in Australia and Canada in 1926 and 1928 as well as with the Clerks-at-the-Table in the several countries of Southern Africa, the formation of our Society with its annual JOURNAL developed so far that, when I retired from the Union Parliamentary service in 1929 and transferred my *domicilium* to London, things began to take shape and the annual Volumes of the JOURNAL regularly to appear.

It was frankly acknowledged by all concerned from the start that the JOURNAL could never be a "best seller", for, as a reviewer once said, it is "a book by experts for experts" and so it must to a great extent remain.

The renowned works on Parliamentary Procedure, issued at Westminster and, in some directions, Overseas, lay down the principles of Parliamentary Procedure, but the JOURNAL shows in survey of the previous year, in addition to the constitutional developments throughout our far-flung Commonwealth and Empire, the application of Parliamentary Procedure in Parliaments and Legislatures, as well as much other information of usefulness and interest in the administration of a House of Parliament.

Thus a common pool of information has been created in regard to the many aspects in the working of the Parliamentary machine, in its varying forms under its wide range of constitutions, whether actually enjoying, or working towards, full democratic government as understood by and according to the principles inherited from the British people. What a contribution have not those small Islands made in the cause of constitutional freedom and individual liberty.

The circumstances in which the Society had birth have already been described in the JOURNAL,[1] as have also the general duties of the Clerk of the House,[2] and the conditions under which he performs the functions of his office.[3]

In the beginning and particularly since 1935, when I returned to South Africa to conduct the Society's operations from Cape Town, there was considerable trepidation on the part of some of the non-European members of our Society as to their status therein, but when they realized there was but one common membership, their hesitation was soon dispelled.

As time went on, it was pleasing to note with what unanimity our members accepted the impracticability of a central executive committee and placed their confidence in me as their sole executive officer. I, in turn, made it my duty meticulously to ensure that every member of the Society was kept regularly informed, through my Annual Report, and otherwise, as to our finances, and when any important change is contemplated, whether in our Constitution or in our practice or administration, it is submitted to members by postal ballot.

Audited statements as to the revenue and expenditure of the Society, countersigned by the Clerks of the two Houses in which the

[1] *See* JOURNAL, Vol. I. 5. [2] *Ib.* Vol. I. 37. [3] *Ib.* Vol. XIX. 295.

office of the JOURNAL is operating, together with the Auditor's Report thereon, are regularly furnished each member.

It was a disappointment to me, as a staunch upholder of the Westminster tradition and all which that means, when at the outset their two Clerks did not also join issue with their Overseas Colleagues as members of the Society who were so anxious for the collaboration of those at Westminster that it was provided in the Constitution that the Clerk of the Parliaments and the Clerk of the House of Commons of the "Mother of Parliaments" should have the honour of being the first to fill the office of Joint Presidents of the Society. Indeed, for many years these offices were kept open for that purpose. It was a great pleasure therefore when, in 1945, this office was accepted by the late Sir Henry J. F. Badeley[1] and Sir Gilbert J. F. Campion.[1] To-day the Society has both the fellowship and fullest co-operation of those at Westminster. In fact, nothing could exceed the support the Society and its JOURNAL receives not only from Sir Robert Overbury, *Cler: Parliamentor*, and Sir Frederic Metcalfe, *Cler: Dom: Com:*, but from the members of their respective and excellent staffs.

Moreover, a system of exchange, instituted particularly by the Clerks-at-the-Table in the Commons, is in active and most satisfactory operation. The value of this scheme and the wide experience it affords Clerks-at-the-Table in Overseas Parliaments and Legislatures is really immense and will bear ample and good fruit for all concerned. This splendid movement is most warmly appreciated Overseas as my correspondence with their Clerks never fails to affirm.

My own service as Clerk-at-the-Table began 50 years ago when I was quite new to the office and its duties. I was Clerk of the Executive Council as well as the Clerk of the Legislative Council of the Transvaal. Under that type of Constitution and during the reconstruction years following the South African War 1899-1902, the hours were long and the work arduous. I should like here to pay tribute to the great help and advice so generously extended to me by that distinguished Clerk of the House of Commons, the late Sir Courtney Ilbert, whose record as Parliamentary Counsel to the Treasury at Whitehall, Law Member of the Viceroy's Council in India and lastly as Clerk of the House of Commons, as well as the author of standard works on Parliamentary and constitutional subjects, is so outstanding. He was not only a willing and patient correspondent, but when I was on leave in England frequently favoured me with long consultations at his flat in the Palace of Westminster when the House was in *Com:* of Supply. I feel that I shall always owe a great deal to the principles he instilled into me in those early days.

It is, therefore, pleasant to see in the recent (1951) Edition of the *House of Commons Manual of Procedure* Sir Frederic Metcalfe carrying on acknowledgment of the Ilbert tradition.

The finances of our Society, especially since the increase in the

[1] Later raised to the Peerage.—[O. C.]

cost of printing and running charges brought about by world economic conditions in recent years, have never been sufficient to enable the Society to hire its own office, and when we first began operations in London in 1932, Sir Edward Alderson, the then Clerk of the Parliaments, willingly allowed me the free use of one of the House of Lords Committee rooms. Since my return to South Africa in 1935, the Union Government has graciously continued this privilege by allowing the Society, as a State-aided institution, similar facilities in the Law Courts at Cape Town, the sessional accommodation in the Houses of Parliament being too limited to afford all-the-year-round occupation.

It is, however, to its members to which the success of the Society and its JOURNAL is so outstandingly due. Words fail me, adequately, to express my gratitude to them for the splendid co-operation which they have accorded me from the very first and throughout these past 20 years. Their courtesy and willingness could not have been excelled, whether in regard to information, in response to the annual *Questionnaire*, or, in reply to the running correspondence continually going on between the Society's office and its members serving over 60 Parliaments and Legislatures of our Commonwealth and Empire. When one considers that all this depends upon the humble postage stamp it makes the co-operation of our members all the more wonderful.

My gratitude is also due during my stay in London to the Librarian of the House of Lords (Mr. C. I. Clay, C.B.) for the use of their Library as well as to the Librarians of the old Colonial office. It is, however, to the Librarians of Parliament at Cape Town to whom we are more especially indebted for their valued assistance from 1935 to the present day. Particularly should I like to mention the present Librarian, Mr. T. Roos, B.A., and his able Assistants, Mr. D. E. Mullany and Mr. J. Quinton, who spare no pains in obtaining references and authorities of which I am in search, in the Statesmen's Reference Collection of their Library.

Lastly, and particularly, I should like to record my warmest appreciation of the valuable help rendered by the Assistants in my lone work: first my daughter Peggy (now Mrs. H. H. Malherbe), who acted as typist, looked after finance and check-read the "copy" and proofs for the JOURNAL while the Society's H.Q. were in London; and secondly, and over a much longer period, do I owe a great debt of gratitude to Miss Vera Chapman, who so devotedly performed these duties since 1935 and, moreover, in accord with such remuneration as the Society is able to afford and well below the current local rates of pay for this work. Nothing could have exceeded the most excellent and devoted services she has so generously rendered.

Sitting here as I do now on the threshold of my resignation from office, what is so gratifying is the magnificent and unabated support given the Society, both financial and material, in regard to the

JOURNAL, by our members and the Parliaments they serve. No greater proof could be given of the long-felt want of such an institution among our Parliaments and Legislatures. Moreover, the peoples and nations they represent, differing as they do in race, creed and colour, are brought together on a common ground of mutual interest, quite apart from policies and politics.

It is a great satisfaction to me that, after negotiations in various directions, Sir Robert Overbury, the Clerk of the Parliaments, and Sir Frederic Metcalfe, the Clerk of the House of Commons, at Westminster—those good friends of the Overseas Clerks-at-the-Table—have undertaken to provide a Clerk to each House to share with one another the duties of Secretary-Treasurer of the Society and Editor of its JOURNAL.

This is indeed a happy solution of the problem and, quite apart from Westminster being the fount from which the Overseas Parliaments and Legislatures have drawn their Constitutions and Parliamentary Procedure, there are many other advantages to the Society and its members in this change, which I know will be warmly welcomed by them.

There are, however, two other "thank you's" I should like here to place on record—namely, to our Publishers, Messrs. Butterworths, and in particular to their Managing Director, Mr. J. W. Whitlock, and to Mr. J. W. Pryke, for their kind consideration at all times, as well as their meticulous accuracy in rendering the 6 months' Sales Returns.

The other "thank you" is to Mr. J. A. Graves, a Director of Messrs. Billing, our Printers, for his patience and forbearance towards one who has so often been knocking on his door, as it were, to speed on the production of each Volume when they must have had so much other work to do. As to the excellence of Messrs. Billings' work, it is blazoned forth in every volume they have printed. But everyone who has had anything to do with the printing of books in England during the post-war years knows how costs have risen, and how little they can be controlled in these uncertain times.

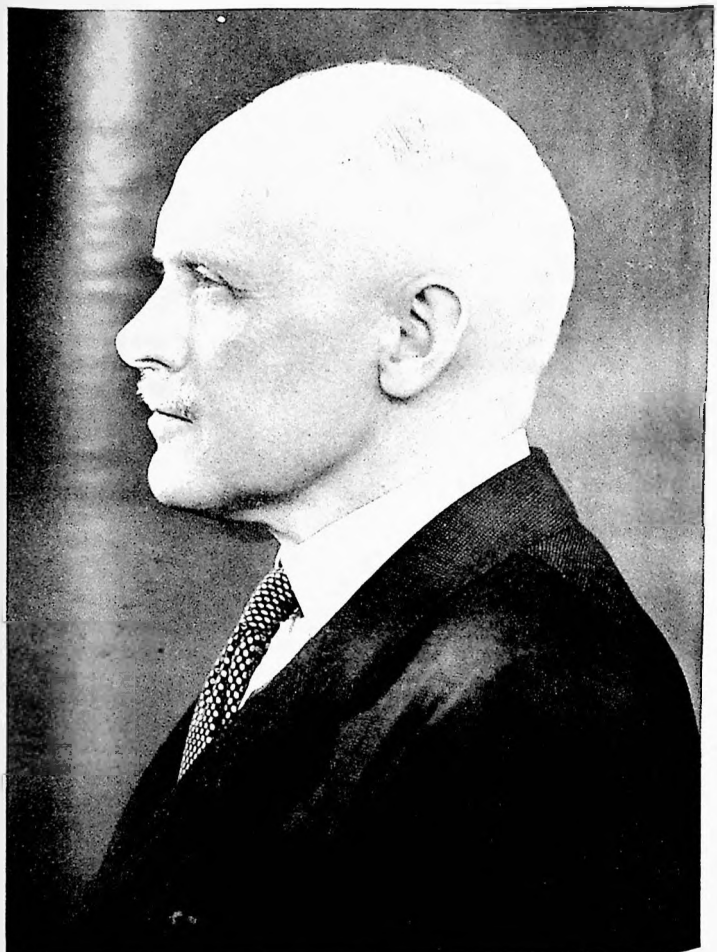
From this long Message of Farewell, it will be seen how I linger at the parting, but as a last word I wish the Society and its JOURNAL, as well as those who are to take over from me, every success.

I shall remain an ex-Clerk-at-the-Table member of the Society and follow its activities from year to year; perhaps I may even offer, now and then, when no longer on the Editorial leash, a contribution to the JOURNAL.

Therefore, I say, not *adieu* but *au revoir*.

OWEN CLOUGH.

November 30, 1952.



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XXXI. 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.*

Blackburn, R. H. A., B.L.—Second Clerk-Assistant of the Parliaments, Northern Ireland; *b.* February 9, 1924; *ed.* Royal Belfast Academical Institution and University of London; Bachelor of Laws (Hons.), 1952; served in inter-Service Special Intelligence School and

* Barrister-at-Law or Advocate.

Department of Foreign Office, 1943-46; member of Parliamentary Reporting Staff, 1946-52; appointed present position, 1952.

Bois, F. de L., M.A.(Oxon.).*—Greffier of the States of Jersey since 1947, and Law Draftsman since 1936; also the *ex officio* Secretary of Committees, sub-Committees and other delegations of the States.

Bosompem, J. E. Y.—Clerk-Assistant to the Gold Coast Legislative Assembly; *b.* May 14, 1921; *ed.* Adisadel College and Achimota, Gold Coast; taught English and History for a time at Adisadel College and was later on Editorial Staff of the *Ashanti Pioneer*, Kumasi (a leading paper in Ashanti, Gold Coast); joined Civil Service 1946 as officer in Department of Co-operation; appointed present position, 1950.

Chowdary, G. V.*—Joint Secretary of the Madras Legislature; *ed.* King's College, Cambridge, and Inner Temple, London; Bachelor of Laws, London University, 1935; called to English Bar from Inner Temple, 1935; Advocate, Madras High Court, 1936; Additional Public Prosecutor, Guntur, 1939 and 1946; Lecturer in Law, Andhra University, 1942-46; Public Prosecutor, Guntur, 1949-52; appointed to present office, 1952.

Combe, G. D., M.C., A.F.I.A., A.C.I.S.—Clerk-Assistant and Serjeant-at-Arms, House of Assembly, South Australia since February, 1952; 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 Australia Infantry Battalion, 1940-45; Tobruk, El Alamein, New Guinea and Borneo Campaigns; commissioned Lieutenant, 1941; Captain, 1944; twice wounded; M.C., 1944; Diploma of Federal Institute of Accountants, 1938, and Chartered Institute of Secretaries, 1939; appointed Clerk-Assistant and Serjeant-at-Arms, Legislative Council, South Australia, 1948; Acting Clerk of the Legislative Council June 25, 1951, to February 13, 1952.

Cooke, J. S. F., B.A.(Oxon.).*—Clerk-Assistant of the Parliaments, Northern Ireland; *b.* Londonderry, 1906; *ed.* Harrow School and Magdalen College, Oxford; Bachelor of Arts, 1928; Barrister-at-Law, Inner Temple, 1930; Inns of Court Northern Ireland, 1931; R.N.V.R., 1939-45; temporary Lieutenant-Commander; Second Clerk-Assistant, 1947; appointed present position, 1952.

Crabbe, E. A. N. Ffoulkes.*—Clerk of the Gold Coast Legislative Assembly; *b.* March 3, 1905; *m.*; *ed.* Methodist Boys' High School, Freetown, Sierra Leone; Clerk, Supreme Court (Gold Coast), 1927-1938; Barrister-at-Law (Middle Temple), 1941; in practice, Gold Coast, 1942-48; twice elected member, Cape Coast Town Council, 1945-1948; District Magistrate, 1948-1952; appointed present position, 1952.

Drummond, A. D., A.I.C.A., A.C.I.S., J.P.—Clerk-Assistant

* Barrister-at-Law or Advocate.

and Serjeant-at-Arms, Legislative Council, South Australia; appointed to State Bank of South Australia, 1930; Department of Lands, 1940; Legislature, 1949; served Australian Military Forces, 1941-46; appointed to present office, February, 1952.

Eronini, A. E., M.B.E.—Assistant Secretary (Clerk of the Nigeria Eastern Region House of Assembly) Nigerian Administrative Service; *b.* 1906; son of late Chief Duruaku Eronini of Mbieri (Owerri); *ed.* Owerri Government School and St. Gregory's Grammar School, Lagos, 1916-1942; Certificate of Honour; entered Nigerian Civil Service (Junior), 1925; appointed present position, 1947.

Farrell, T. F.—Clerk of the Legislative Council, Trinidad, B.W.I.; *b.* December 29, 1907; 2nd Copyist, 4th-class Clerk, 3rd-class Clerk, Registrar and Marshal's Department, 1928-1935; Clerk to the Judges, 1936; 1st-class Clerk, 1939; Senior Clerk, Health Department, 1943; Principal Officer, Class II, Secretariat, 1944; Seconded as Chief Electoral Officer, 1946; Principal Officer, Class I, Secretariat, 1947; Assistant Secretary, 1950-51; appointed present position, 1952.

Gwandu, Mallam Umaru.—Clerk of the Northern House of Assembly, Northern Region, Nigeria; *b.* 1913; *ed.* Gwandu Elementary, Birnin Kebbi Primary, Sokoto Middle Schools and Katsina Higher College; passed Higher College Teachers' Examination, 1938, with credits History and Geography; teacher Sokoto Middle School, 1938-45; Private Secretary to Emir of Gwandu, 1945-50; Clerk of the House of Chiefs and of the House of Assembly, September, 1949.

Knaggs, K. J.—Clerk of the Legislative Council, Northern Rhodesia; *b.* 1920; *m.* 1945; 2 sons; *ed.* St. Paul's School and Law Society's School of Law; served with Indian Signal Corps, India and Ceylon; entered Colonial Administrative Service, Northern Rhodesia, 1946; seconded for duty as Clerk of Legislative Council, 1950.

Lall, S. C., B.A.(Cal.), B.A.Hons.(Lond.), Diploma in Ed. (Lond.).*—Secretary of the Legislative Council, Bihar, India; *b.* 1906; practised law, High Court, Patna, 1937-1941; joined War Service as Com. Officer, 1942; selected for Civil Administration by Government of India, 1945; Sub-divisional Magistrate with 1st-class powers, Tippera, East Bengal, 1945-47; Deputy Secretary, Bihar Legislature, May, 1947; appointed present office, April, 1950.

McFarlane, R. J.—Clerk-Assistant, House of Assembly, Union of South Africa; *b.* August, 1908; *ed.* de Villiers-Graaff High School, Villiersdorp; entered Standard Bank of S. Africa, 1926; verbatim Shorthand writer, Supreme Court, 1931; Committee Clerk, House of Assembly, 1931; Chief Committee Clerk, 1947; appointed present office April 1, 1952.

McGrath, F. D.—Clerk, Western Regional Legislature, Nigeria; *b.* 1921; *ed.* St. Bede's College, Manchester, and Christ's College,

* Barrister-at-Law or Advocate.

Cambridge; Military Service, 1941-42; joined Colonial Service, 1942; Benin Province, 1942-47; Western Regional Secretariat, Ibadan, 1947; Clerk of the Western House of Assembly, 1947-48; Secretary to Western Regional Conference on Revision of Constitution, 1949; at various times 1947-51 concurrently with these duties worked as Assistant Secretary Administration, Assistant Secretary Political, or Assistant Secretary Finance; Clerk of the Regional Executive Council, January-February, 1952; appointed to present position, 1951.

Rangole, Shri K. K.—Secretary to the Madhya Pradesh Legislative Assembly; *b.* August 15, 1903; joined Legislative Assembly Department, March, 1920; appointed present position, December, 1952.

Srivastava, Shri R. C., M.A.—First Secretary of Vindhya Pradesh Legislative Assembly; Industrial Surveyor U.P. Government until 1941; joined Chhatarpur State Service Durbar Secretary; on integration of States Deputy Secretary to Government in Revenue and Political Department till February, 1952; Secretary to Lieutenant-Governor, Vindhya Pradesh, March 1, 1952, and assumed present office, March 26, 1952.

GENERAL INDEX TO VOLUMES I TO XX

NOTE.—*The Roman numeral gives the Volume and the Arabic numeral the Page. Constitutional matters are arranged under Countries and Procedure, etc., under Subject headings.*

Speaker's Rulings of the House of Commons are not included in this Index as the Articles thereon are an index in themselves (vide Volumes of the JOURNAL, *I to VII, XIII to XVI and XVIII to XX covering "Com. Hansard," Volumes 251-491 5 series).*

(Art.)=Article in Journal.
C.W.H.=Committee of the Whole House.
Q=Questions. O.P.=Order Paper.
Amdts.=Amendments.
(Com.)=House of Commons.
Sel. Com.=Select Committee.

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