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

EDITED BY
R. W. PERCEVAL
AND
C. A. S. S. GORDON

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

VOL. XXI

FOR 1952

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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			★	★	★							
Ceylon	★	★	★	★		★	★	★	★		★	
India — Parliament of India		★	★	★	★				★	★	★	★
India — Madras	★	★	★						★	★	★	★
India — Bombay		★							★			
India — Uttar Pradesh			★		★	★	★			★	★	★
India — Bihar					★	★	★	★				
India — West Bengal												
India — East Punjab				★	★						★	
India — Orissa		★	★						★	★		
India — Madhya Pradesh		★	★						★	★		
India — Mysore				★	★							
Pakistan — Constituent Assembly				★	★						★	★
Pakistan — East Bengal		★	★								★	
Pakistan — West Punjab												
Pakistan — North-West Frontier Province				★						★	★	
Pakistan — Sind		★	★						★	★		
Southern Rhodesia					★	★	★	★			★	
Bermuda	*No set rule obtains.*											
British Guiana				★	★	★				★	★	★
East African High Commission	★			★					★			
Gold Coast and Ashanti			★			★			★			★
Jamaica					★					★		
Kenya Colony and Protectorate		★			★			★		★		
Federation of Malaya, Malta, &c., Mauritius and Nigeria	*No set rule obtains.*											
Northern Rhodesia											★	★[1]
Singapore Colony		★	★	★	★	★	★	★	★	★	★	★
The Sudan			★	★	★						★	★
Tanganyika Territory	*No set rule obtains.*											
Trinidad and Tobago, B.W.I.	★	★	★	★	★					★	★	★

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

CONTENTS

USUAL SESSION MONTHS OF PARLIAMENTS AND LEGISLATURES *Back of title-page*

PAGE

I. **Editorial**

Transfer of Editorial Duties . . . 9
Constitution of the Society . . . 10
Introduction to Volume XXI . . . 11
Obituaries and Retirement Notices . . 13
Honours 22
Acknowledgments to Contributors . . 22

II. THE CIVIL LIST, 1952. BY H. R. M. FARMER . . 23

III. THE QUEEN'S CONSENT 28

IV. THE FOURTH CLERK-AT-THE-TABLE. BY E. A. FELLOWES, C.B., C.M.G., M.C. 32

V. THE SELECT COMMITTEE ON THE ARMY ACT AND AIR FORCE ACT. BY D. SCOTT . . . 34

VI. DELEGATED LEGISLATION: DEBATES IN THE LORDS 39

VII. PARLIAMENTARY QUESTIONS ON THE NATIONALISED INDUSTRIES 44

VIII. ALLOCATION OF TIME ORDER (NATIONAL HEALTH SERVICE BILL) 52

IX. BILLS WHICH THE AUSTRALIAN SENATE MAY OR MAY NOT AMEND. BY J. E. EDWARDS, J.P. . . 61

X. MINISTERS' AND MEMBERS' SALARIES. BY F. C. GREEN, M.C. 64

XI. NEW ZEALAND: PROPOSED ALTERNATIVE TO FORMER SECOND CHAMBER. BY OWEN CLOUGH, C.M.G. . 72

XII. THE CONSTITUTIONAL CRISIS IN SOUTH AFRICA. BY DENIS VICTOR COWEN, B.A., LL.B. . . . 91

XIII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1952. BY J. M. HUGO, B.A., LL.B., J.P. 104

XIV. DISCRIMINATORY LEGISLATION: VALIDITY OF THE CEYLON CITIZENSHIP ACT. BY R. ST. L. P. DERANIYAGALA, M.B.E. 108

PAGE

XV. POLITICAL PARTIES IN INDIA. BY M. N. KAUL, M.A. . 110

XVI. FINANCIAL POWERS OF THE UPPER HOUSE UNDER THE INDIAN CONSTITUTION. BY C. C. CHOWDHURI . 113

XVII. PRESENTATION OF A MACE TO THE LEGISLATIVE COUNCIL OF MALAYA. BY OWEN CLOUGH, C.M.G. . 120

XVIII. APPLICATIONS OF PRIVILEGE, 1952 . . . 122

XIX. PRIVILEGE: SOME ASPECTS OF THE CASE OF MR. PRITT IN KENYA. BY SIR FREDERIC METCALFE, K.C.B. 131

XX. THREE PRIVILEGES ORDINANCES . . . 133

XXI. MISCELLANEOUS NOTES:

1. *Constitutional:*

United Kingdom: Consolidation of Enactments 136

House of Lords: Reform . . . 136

Isle of Man 137

Union of South Africa: The High Court of Parliament Act, 1952 138

India: Madras: Constitution, Numbers and Quorum of the Legislative Council and Legislative Assembly 147

Pakistan: Rawalpindi Conspiracy (Special Tribunal) Act, 1951 147

British Guiana: Constitutional Changes . 148

Gold Coast: Ministerial Changes . . 149

Kenya: New Constitution of Legislative Council 149

2. *General Parliamentary Usage:*

House of Lords: Adjournment for late Leader of the House 150

Channel Islands: Jersey: Financial Interest . 150

Canada:

British Columbia: Designation of Official Opposition 150

Saskatchewan: M.P.'s and Government Contracts and Pecuniary Interest . . 151

Australia:

House of Representatives: Use of Chamber for Other Purposes . . . 151

South Australia: Tables, etc., in *Hansard* . 152

Western Australia: Time Limits of Speeches 152

PAGE

MISCELLANEOUS NOTES—*continued:*

India: Bihar:
Ministers' Right to Sit in Both Houses . 153
Leader of the Opposition: Salary and Definition 153
Kenya: Emergency 153
Northern Rhodesia: African Representative Council: Use of English Language . 153

3. *Privilege*
Kenya: Privilege of U.K. Member of Parliament 154
Mauritius: Privileges and Immunities of Legislative Council 154
Northern Rhodesia:
Inaccurate Press Reports . . . 154
Reading of Libellous Letter . . 155

4. *The Chair*
House of Commons: Motions of Censure upon the Chair 155
Union of South Africa: Mr. Speaker's Seat . 157
India: Bihar: Relative Precedence of Presiding Officers of Two Houses . . . 157
Mauritius: Provision for Temporary President and Amendments to Order of Precedence of Members 157

5. *Order*
House of Commons: Articles allowed to be brought into the Chamber by Members . 158
Mauritius: Suspension of Member . . 159
Northern Rhodesia:
Mention of Civil Servants in Debate . . 159
Wearing of Uniforms . . . 159

6. *Procedure*
House of Commons:
Irregularities vitiating a Division . . 159
Private Member's Bill introduced by Member subsequently becoming Member of Government 160
Revival of a Dropped Order of the Day . 161
Australia: " Urgency " Matter . . 162

PAGE

MISCELLANEOUS NOTES—*Continued:*

Union of South Africa:
The Guillotine 164
Expunging of Resolution from Minutes of Proceedings of Select Committee . . 165
Kenya: Rejection of Amendment . . 166

7. *Standing Orders*
House of Lords: Suspension of Standing Orders Opposed 166
South Africa: Natal: Amendments to Standing Orders of Provincial Council . . 166
India:
Central Parliament: Amendments to Standing Orders 167
Mysore: Rules of Procedure . . . 168
Southern Rhodesia: Amendments to Standing Orders 169
Kenya: New Standing Orders . . . 169

8. *Financial Procedure*
Union of South Africa: Changes in the form of Appropriation Legislation and of the Estimates of Expenditure . . . 170
Transvaal: Consideration of Public Accounts in Provincial Council . . . 171
India: Madhya Pradesh: Estimates Committee 171
Kenya: Financial Procedure . . . 171
Tanganyika: Public Accounts Committee . 172

9. *Bills, Petitions, etc.*
House of Lords: Explanatory Memoranda on Bills 172
House of Commons: Extraneous Matter included in a Petition . . . 172
Southern Rhodesia: Examiners of Petitions for Private Bills 173
Kenya: "Scope of the Bill" . . . 173
Gibraltar: Criticism of Government's Methods 174

10. *Electoral*
Canada: House of Commons: Readjustment of Representation 174

PAGE

MISCELLANEOUS NOTES—*Continued:*

Australia:

House of Representatives: Absent Voters . 176

Western Australia: Electoral Procedure . 176

Union of South Africa: Electoral Delimitation . 176

India: Amendments to the Constitution . 177

II. *Members' Salaries*

Canada: House of Commons: Payment of Retiring Allowances to Members . . 178

India:

Uttar Pradesh: Parliamentary Emoluments 179

Mysore: Salaries of Ministers, Members and Secretariat 180

Southern Rhodesia: Remuneration and Free Facilities—Air Travel . . . 181

XXII. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER 182

XXIII. EXPRESSIONS IN PARLIAMENT, 1952 . . . 186

XXIV. REVIEW 190

XXV. THE LIBRARY OF THE CLERK OF THE HOUSE . . 192

XXVI. RULES AND LIST OF MEMBERS . . . 193

XXVII. MEMBERS' RECORDS OF SERVICE . . . 194

INDEX TO VOLUME XXI 204

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

VOL. XXI FOR 1952

I. EDITORIAL

Transfer of Editorial Duties.—There can be few men in any profession who have brought to the creation of a learned Society so much wisdom, energy and selflessness as have been displayed by Mr. Owen Clough. The 20 red and green volumes of the JOURNAL, which are the material results of his work, are impressive enough to the common reader and a worthy addition to the bookshelves of any library; only the members of the Society, however, can have any conception of the intangible qualities of goodwill and affection (by no means too strong a word) which permeated the relations between themselves and the Society's founder and contributed so notably to the life and quality of the JOURNAL. The files of the Society bear ample witness to the friendly interest which Mr. Clough showed in the activities of every member, and many of those who have written to us since we succeeded to the editorial chair have gone out of their way to make it clear how greatly this interest was appreciated. It cannot, therefore, be with feelings other than trepidation that we offer to the Society the firstfruits of our editorship; an exacting standard has been set by our predecessor, and we shall do our utmost to maintain it.

In his farewell article in the preceding volume, Mr. Clough remarked that the JOURNAL had been described as " a book by experts for experts ". There is, we think, some justice in this description, and we would venture to draw attention to the utter dependence of the expert, in his capacity of reader, upon his *alter ego*, the expert as prolific author. There are many parliamentary occurrences, of the greatest interest to members, which go unreported even in the pages of *The Times*, and can only be brought to our notice by answers to our annual *Questionnaire* and spontaneous information provided as the occasion arises. It would not be possible to cover in our questionnaires every single subject likely to be of interest to

members; even the list which was circulated by our predecessor with his Nineteenth Annual Report is by no means exhaustive. We shall, therefore, continue to ask each year for information upon such matters as constitutional changes and amendments to Standing Orders (which are always with us), while relying upon individual members to let us know of any unusual or recondite matters of interest. Nor need members feel themselves confined to the description of concrete events within a particular year; general and historical articles are also very welcome. A member may be well known within the legislature which he serves as an authority on (let us say) the trial of controverted elections; it is, nevertheless, possible that this interesting fact may remain unknown to us unless he furnishes us, unasked, with the fruits of his knowledge. We therefore entreat all members to bear constantly in mind our need for their continuous support.

Constitution of the Society.—An undated ballot-form was circulated to members in July, 1953, in order to ascertain their opinion on the three subjects connected with the Society's constitution. Two-thirds of the replies have now been received; certain deductions which can be made from this incomplete return are set forth below.

(1) *Name of the Society.*—It is very likely that this will be the last number of the JOURNAL to be printed under its present title. An absolute majority of members consider that the Society should have a title other than "The Society of Clerks-at-the-Table in Empire Parliaments", and have submitted alternative suggestions. All these alternatives will be listed in a further ballot, and members will be asked to pronounce judgment upon them.

(2) *Rules of the Society.*—An absolute majority of members have pronounced themselves in favour of the adoption of the draft Rules which were circulated with the ballot. These, therefore, are now the Rules of the Society, and are printed in this Volume for the convenience of members. We observe that in the years before 1940 the Rules were printed in every Volume; we do not think it necessary to revert to this practice, and shall in future only print the Rules when they have been amended during the course of a year.

A number of amendments have been proposed to the draft Rules, and members will be given an opportunity of voting upon them in due course.

(3) *Honorary Life President.*—It will be no surprise to members to learn that every member who has so far replied to the ballot has agreed to the appointment of Mr. Owen Clough as Honorary Life President of the Society. The Editors are even now engaged in heated debate as to whether, when the returns are completed, the result shall be announced *nemine dissentiente* (the wording which the Lords employ), or *nemine contradicente* (the form favoured by the Commons).

Introduction to Volume XXI.—The proceedings consequent upon the death of King George VI, which were without doubt the most moving and memorable parliamentary events of 1952, have already been fully described in Volume XX.

The Civil List Acts of 1936 and 1937, which made provision for King Edward VIII and King George VI respectively, were not mentioned in the JOURNAL, since they did not differ in any of their essential features from the traditional type of Civil List Act with which members are familiar. The Civil List Act of 1952, however, which made provision for the present Queen, introduced certain novel principles, which were the subject of lengthy debate. An article upon this matter has been contributed by the Clerk to the Select Committee on the Civil List, upon the recommendations of which the Bill was founded.

As in 1951, so in 1952 the most outstanding constitutional event was a contest between the Parliament and the Courts of Justice of the Union of South Africa. As a result of a successful appeal to the Appellate Court against the validity of the Separation of Voters Act, a further Act was passed by Parliament setting up a High Court of Parliament with power to review the correctness of any decision of the Appellate Division declaring invalid an Act of Parliament. The High Court when set up proceeded to over-rule the Appellate Court's judgment upon the Separation of Voters Act; since, however, the Appellate Court then pronounced the High Court of Parliament Act itself to be unconstitutional, the judgment of the High Court of Parliament remained unimplemented.

Once again Professor Denis Victor Cowen has brought his unique qualities of learning and lucidity of exposition to bear in the composition of Article XII, which deals with the proceedings of the Appellate Court and the legal arguments which influenced their course. The terms of the High Court of Parliament Act and the proceedings thereon in Parliament and in the Courts are summarised briefly in Chapter XXI (pp. 138-147).

Other articles on constitutional matters include a review of Bills which the Senate of the Australian Commonwealth may or may not amend; a description of discussions in New Zealand with the object of providing an alternative to the Second Chamber, which was abolished in 1950; an account of litigation arising from certain provisions of the Ceylon Citizenship Act, 1948, which was ultimately brought before the Judicial Committee of the Privy Council; and a study of the financial powers of the Upper Houses of the Central and Provincial Legislatures in India.

A matter which is of peculiar interest to members of this Society is dealt with in an article on the creation of a Fourth Clerk-at-the-Table of the United Kingdom House of Commons, whose special duty it is to promote and maintain liaison between the House of Commons and Legislatures in all countries of the Commonwealth.

We should like to take this opportunity of extending the cordial good wishes of the Society to Mr. D. W. S. Lidderdale, who has been appointed to this new post.

An article is included on some interesting debates which took place in the House of Lords on subjects related to the parliamentary control of delegated legislation. Another article summarises the first Report of the House of Commons Select Committee on Nationalised Industries, which made certain recommendations concerning Parliamentary Questions. We also thought it worthwhile to write an article on the application of a guillotine motion to the National Health Service Bill, not only on account of certain important rulings by Mr. Speaker on Standing Order No. 41 (Business Committee), but also because the debates gave rise to a quite unusually large number of interesting and varied points of order, upon which rulings were sought and obtained.

The House of Commons set up in 1952 a Select Committee to review the form of the annual Army Act and Air Force Act, and the Clerk of the Committee has contributed an article describing the debates which led to its institution and the Report which it made at the end of its First Session's labour.

There is also an article by the Clerk of the House of Representatives on increases of salaries and allowances, etc., of Members of Parliament and Ministers of the Australian Commonwealth.

An article by the Secretary of the House of the People in India describes certain general principles which have been laid down by the Speaker in regard to the recognition of official political parties, and includes a table which gives some impression of the bewildering variety of parties and organisations which may arise in a large federation of different religions and races.

The Clerk of the Councils of the Federation of Malaya has contributed information upon the basis of which Mr. Clough has written an article describing the presentation of a Mace to the Legislative Council by representatives of Their Highnesses the Rulers.

The application of Privilege at Westminster and elsewhere is accorded its usual article; in addition, there is an article by the Clerk of the House of Commons commenting upon certain aspects of the case of Mr. Pritt in Kenya.

Members will observe that the great body of minor comment and description, which until now has usually been included in the Editorial, is here printed in a separate chapter ("Miscellaneous Notes") towards the end of the Volume. As members know well by experience, a very large proportion of these comments is not written by the Editors at all, but by the Clerks in the respective Parliaments. We have, therefore, thought it best to abstain from taking credit even indirectly for the whole of this corpus of erudition. Its subject-matter being (in general) of lesser importance than that

contained in the articles, it has been placed towards the end of the Volume.

In an attempt to reduce printer's costs we have made certain experimental alterations in the method of printing footnotes, which we hope will commend themselves to our readers. The great majority of the footnotes which appear in this publication are references, and do not need to be read at the same time as the article; these, therefore (except in Chapter XXI (Miscellaneous Notes) where, for convenience, they are retained in the body of the text), we have removed from the bottom of the page to the end of each chapter, the numbers in every chapter starting at 1. Where, however, there are footnotes which are necessary to the immediate comprehension of the article, being intended as amplifications of the text, we have marked them with an asterisk or similar printer's device and retained them at the foot of the page. The effects of this change will be seen most clearly in Professor Cowen's article.

We also consider that the inclusion in every volume of an index for all its predecessors is unnecessarily wasteful of space. We have, therefore, decided in this and future volumes to index only the current volume, publishing a consolidated index in every fifth volume.

Finally, we wish to emphasise to members of the Society, whose servants we are, that no criticisms concerning form and content which they may care to send to us will be resented, and that all suggestions for improvement will be most heartily welcomed.

Carrel Inglis Clark, *Late Clerk of the Legislative Council, Tasmania.**—With the death of Mr. C. I. Clark on January 18 last, who for nearly forty years served the Tasmanian Parliament, Tasmania lost one of its most able and conscientious servants.

Carrel, or " Tiffey " as he was known to his intimates, first saw the light of day at Battery Point on January 12, 1888. He was the youngest son of the late Hon. Andrew Inglis Clark, who was a Member of the House of Assembly for 20 years in the latter part of last century, during which time he served two terms as Attorney-General, and in 1898 he was made a Judge of the Supreme Court. A son bearing the same name recently retired from the same office. During his term as Attorney-General the first Mr. A. I. Clark played a very prominent part as one of Tasmania's delegates to the early Federal Conventions which drafted the Constitution of the Commonwealth of Australia.

Our friend Carrel was educated at the Hutchins School,

* Contributed by the Clerk of the House of Assembly.

and at an early age showed marked literary ability. After leaving school he worked for a number of different newspapers in Tasmania, including the *Tasmanian News*, the *Advocate*, and the *Mercury*.

In 1915, upon the enlistment for war service of Mr. F. C. Green, now Clerk of the House of Representatives but then Clerk-Assistant and Serjeant-at-Arms of the House of Assembly, Carrel Clark (himself rejected for war service) was appointed relieving Clerk-Assistant and Serjeant-at-Arms at the House of Assembly. For 2 years he served on a sessional basis, but from 1917 until the return of Mr. Green from overseas in 1919 he served on a full-time basis. In that year he was appointed Clerk-Assistant and Usher of the Black Rod at the Legislative Council. On August 1, 1946, upon the retirement of Mr. C. H. D. Chepmell, he was appointed Clerk of the Legislative Council, an office which he held until his death.

No one knew more of the history of the Parliament in this State, and in 1947 he published a book called *The Parliament of Tasmania*, an historical sketch, full of valuable and interesting information.

No record of Carrel Clark would be complete without a tribute to his sterling character. He was a living example of some of the great human virtues, viz., complete and absolute honesty, courage and unselfishness. Beneath an unassuming and nervous disposition he concealed a generous nature. It has often been said about some character or other that "he would give you his last shilling". I could quote more than one case in Carrel's more chequered financial days when this was literally true.

He was a remarkably well-read man, with an amazingly retentive memory, and as the bulk of his reading comprised biographies, histories and the like, his knowledge of these subjects was profound. Carrel has been truly described by many who knew him as a "character" This was undoubtedly true, and I wish I had the literary skill to do justice to his humour, his amusing eccentricities, and his lovable character. Those of us who were privileged to enjoy his friendship will never forget him.

C. M. Ingwersen.*—The death took place at Polile, his home at Irene, Transvaal Province, Union of South Africa, on May 16, 1953, of Mr. C. M. Ingwersen, the able and much-loved Clerk of the Transvaal Provincial Council in his 60th year, following a very short illness.

* Contributed by Mr. Owen Clough.

He was buried from St. Martin's Church and interred in the Irene Cemetery.

On May 26, when the Council next met after Mr. Ingwersen's lamented death, His Honour the Administrator, in his Opening Speech said:

> It is with deep regret that I have to inform the Council of the sudden demise of Mr. C. M. Ingwersen, Clerk of the Council. The late Mr. Ingwersen filled this post for 12 years and at all times enjoyed the esteem of every member of the Council. At the opportune moment you will be requested to pass a Motion of Condolence.

Later that day, and before the commencement of Business, His Honour the Administrator moved, as an unopposed Motion, seconded by the Leader of the House (Dr. Theo. Wassenaar, Member of the Executive Committee):

> That this Council having learnt with deep regret of the death of Mr. C. M. Ingwersen, desires to place on record its deep appreciation of his services to the Council. The Council further resolves that an expression of its sincere sympathy be conveyed to the relatives of the deceased.

The Leader of the Opposition (Mr. T. Builski) and Mr. F. H. Odendaal (the other Member of the Executive Committee present) also spoke. All speakers were unanimous in paying glowing tribute to Mr. Ingwersen's character, integrity and friendly co-operation with all Members of the Council and of the Executive Committee, at all times.

The Resolution was agreed to, all Members standing.

The Irene Church of England Magazine of May 18, 1953 contained the following In Memoriam notice of the burial:

> The sad news of the sudden death of Coenraad Ingwersen came as a great shock to us all, from which we shall not easily or soon recover. He was a good man, greatly beloved by his friends and deeply respected by all who knew him for his deep simple faith, his transparent sincerity and fearless integrity. We shall long miss his cheerful presence and that infectious laughter which gladdened the hearts of all who enjoyed the pleasure of his company. May he rest in peace.
>
> To Mrs. Ingwersen we offer our deep respectful sympathy and humble loving prayers; that God will give her His Divine consolations in her great grief, and His strength and companionship to enable her to endure her loneliness.

Mr. Ingwersen was also Clerk of the Executive Committee of the Province and both these offices kept him busy during most of the year. There was, therefore, so to speak, as with the Clerks of the other Provincial Councils of the Union, no Recess for him.

Mr. Coenraad Matthys Ingwersen was born at Amster-

dam, Holland, August 11, 1893, and came to South Africa 17 years later.

Mr. Ingwersen was also a member of the Board of the Eden Vale Hospital, in the work of which he took a lively interest.

The writer of this obituary notice had the privilege of being a very close friend of the deceased and, therefore, had many opportunities of both knowing and seeing how much Mr. Ingwersen was revered and admired by the various administrators under whom he had served, as well as by the members of the Executive Committee and of the Provincial Council of the Province. His knowledge of parliamentary procedure was extensive, and he was also well versed in the questions falling under the administration of the Transvaal.

Mr. Ingwersen had been a most ardent and co-operative member of our Society ever since his appointment to the Clerkship of the Provincial Council 12 years ago, and we shall miss his valuable advice and counsel.

We should like, on behalf of all the members of this Society, to associate ourselves in the general expression of deep sympathy with his widow in her great bereavement.

Sir Robert Overbury, K.C.B.—On October 27, 1953, at the beginning of Business, the Lord Chancellor read from the Woolsack a letter from Sir Robert Overbury, Clerk of the Parliaments, announcing that he had tendered his resignation to the Prime Minister:

I served under successive Lord Chancellors (said Sir Robert in his letter) since I was appointed to a clerkship in the Supreme Court in 1910, and I have held a post at the Table of the House for nineteen years, for the last four of which I have had the privilege and honour of holding the office of Clerk of the Parliaments.

I would ask you to be good enough to express to their Lordships my very deep appreciation of the kindness and consideration which I have invariably received from all quarters of the House during the time I have served the House.

After reading the letter, the Lord Chancellor moved that it be taken into consideration forthwith. Thereupon Lord Woolton (on behalf of the Leader of the House, Lord Salisbury) moved to resolve:

That this House has received with sincere concern the news of the retirement of Sir Robert Leslie Overbury, Knight Commander of the Most Honourable Order of the Bath, from the office of Clerk of the Parliaments, and thinks it right to record the just sense which it entertains of the zeal, ability, diligence and integrity with which the said Sir Robert Leslie Overbury has executed the important duties of his office during his tenure thereof.

Lord Woolton said:

The extent of Sir Robert's services must be entered in the Records of the Proceedings of this House. He entered the Lord Chancellor's Department in 1910, and served under successive Lord Chancellors in the Crown Office, as Secretary of Commissions of the Peace and as Chief Clerk. He was appointed Reading Clerk at the Table of the House in June, 1934, and promoted to Clerk Assistant in June, 1937, and he has been Clerk of the Parliaments since May, 1949. As he reads the record of your Lordships proceedings to-day, we should like him to know how wide has been our appreciation of the services that he has rendered to us. After almost twenty years' service at this Table, his knowledge of what is right and what is possible according to the practices of this House, has always been at the disposal of Members. That was his duty; but he has fulfilled it with so much patience and such obvious desire to help that he has placed all of us in his debt. I am sure that the noble Lords who sit on the Front Bench opposite will join with my colleagues on this Bench in expressing our gratitude to Sir Robert for the way in which he has so unobtrusively guided us around dangerous corners.

In conclusion he said that Sir Robert had endeared himself both to their Lordships and to the staff of the House. He retired before the age prescribed in his Patent, and so gave to other servants of the House the opportunity for advancement. This was characteristic.

The Earl Jowitt (Leader of the Opposition) recalled that Sir Robert had succeeded a very remarkable man, the late Lord Badeley. Sir Robert had been wise enough not to try to copy his predecessor. By quiet, unassuming efficiency and care he had endeared himself to the whole House.

Lord Simon said that it was the unofficial members of the House (as one of whom he spoke) who felt especially grateful to Sir Robert for the help and guidance he gave. Since the Lords were themselves responsible for order in the House, they had frequently to consult the Table on points of order and procedure. Sir Robert had always been ready to help on such occasions; and Lord Simon wished to express his gratitude and affection for him.

On behalf of the Liberal Peers, Lord Rea paid tribute to Sir Robert's consistent helpfulness, logic and learning and to his willingness at all times to give sympathetic hearing and kindly counsel. In conclusion he quoted the following lines from the *Canterbury Tales*:

> A Clerk there was (of Oxenford also)
> That into Logic hadde, long ago;
> For he would liefer have at his bed's head
> Twenty bookes—clad in black and red.
> Tending to moral vertu was his speech
> And gladly would he learn, and gladly teach.

The Lord Bishop of Ely, on behalf of the Spiritual Peers, spoke of the help Sir Robert had afforded on every occasion when the Bishops had been involved in the ceremonial or business of the House.

Lord O'Hagan said he felt sure he expressed the feelings of his fellow Back Benchers in drawing attention to the traditionally happy relations which had existed between Sir Robert and the members of the House. His courtesy, knowledge and wisdom had been valued by them all.

Lord Schuster who, as Clerk of the Crown in Chancery, had known Sir Robert 38 years ago in the Office of the Lord Chancellor, spoke of Sir Robert's extraordinary balance of mind and his capacity to state a case for others. He had always worked without ambition, and with the sole object of doing his job as thoroughly and courteously as it could be done. He reminded the House that Sir Robert had reached his present position solely on merit.

The Chairman of Committees (Lord Drogheda) recalled that Sir Robert had been responsible for the administration of the staff of the House, work which was, of course, done behind the scenes. The sympathetic and happy working of the services of the House had been due to Sir Robert's influence.

The Lord Chancellor, who spoke of himself as an isolated and conspicuous figure on the Woolsack, said that if he had made few errors in the conduct of the procedure of the House, it had been due to the generous and ungrudging support which he had been given by Sir Robert. In departing, Sir Robert was leaving a host of friends.

The Motion which had been proposed by Lord Woolton was agreed to, *nemine dissentiente*, and was *ordered* to be communicated to Sir Robert.

It was then moved:

That an Humble Address be presented to Her Majesty laying before Her Majesty a copy of the letter of the said Sir Robert Leslie Overbury and likewise of the Resolution of this House, and recommending the said Sir Robert Leslie Overbury to Her Majesty's Royal Grace and Bounty.

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

To this Address Her Majesty replied, on October 29, as follows:

I have received your Address recommending Sir Robert Leslie Overbury, K.C.B., late Clerk of the Parliaments, to my Royal Grace and Bounty, and I will give directions accordingly.

Sir Robert has been succeeded as Clerk of the Parliaments by Mr. Francis William Lascelles, C.B., M.C.

F. L. Parker, F.R.G.S.A.—On March 31, 1953, Mr. F. L. Parker, the Clerk of the Parliaments and the Clerk of the House of Assembly of the State Parliament of South Australia, retired from his parliamentary office after an official service of nearly 53 years, of which 35 was spent in such service, which he joined in 1908.

During the prorogation speeches in the House of Assembly on November 20, 1952, the Premier, the Hon. T. Playford, paid great

tribute to Mr. Parker's service to Parliament and said that he hoped he would enjoy a well-earned rest with many years of happiness ahead of him, and take with him happy memories of his long years of association with Members of Parliament.

The Premier was supported by Mr. O'Halloran, the Leader of the Opposition, who regretted that when they met again next Session, Mr. Parker would not be in his accustomed seat. He, too, hoped that Mr. Parker's retirement would be blessed with all those good and desirable things that he would wish himself.

Mr. Speaker (Hon. Sir Robert D. Nichols) on behalf of Mr. Parker expressed his thanks to the Premier and the Leader of the Opposition for the tributes they had paid him.

Mr. Parker came to them from the Chief Secretary's office 35 years ago. He had had a vast experience, first as Clerk in the House of Assembly and then as its Clerk and as Clerk of the Parliaments. He had served as Clerk to various Parliamentary Committees and the Head of the House of Assembly Department. This was a large undertaking and much professional skill and application had been required. Mr. Parker would remain in office until the end of March next, but this was the last time he would sit at the Table of the House.

On the afternoon of March 30, 1953, representatives from the staffs of all the Departments of the Legislature and the Parliamentary Draftsman's Department invited Mr. Parker to tea in the parliamentary dining rooms when a handsome entrée dish was presented to him with all good wishes.

The following day, a representative gathering of Ministers and Members entertained him in the dining room when Mr. Speaker, on behalf of the Members, presented him with a silver tea service and salver, suitably inscribed, and expressed the good wishes of all concerned, for Mrs. Parker and himself. The acting Leader of the Opposition (Hon. F. Walsh), the Minister of Lands (Hon. C. R. Hincks) and the Minister of Works (Hon. M. McIntosh) supported the toast and apologised for the absence of the Premier, who had been unexpectedly called away. In responding to the toast, Mr. Parker reviewed some of the principal changes and advances which had been made over the last 50 years and the activities of the Commonwealth Parliamentary Association, with references to many of the public men of the past.

Mr. Parker had been the Honorary Secretary-Treasurer of the Empire Parliamentary Association since 1925, and had accompanied the Australian and New Zealand Delegations to the United Kingdom and U.N.O. Conference in Paris in 1948. He was President of the Royal Geographical Society of Australia (S. Australia Branch) 1933-36. He was also the Chairman of the Board of Editors of the Centenary History of South Australia, 1936; member of the Public Library Museum and Art Gallery Board, 1936-39; Chairman of the

Historical Memorials Committee since 1940; Chairman of the Institute of Public Administration (S.A. Branch), 1942; a member of the Committee of the Commonwealth Club, Adelaide; and Foundation Member and Vice-Patron of the Amateur Sports Club of South Australia.

Mr. Parker served with the Australian Military Forces in World War I, in Egypt, Gallipoli and Palestine, retiring with the rank of captain.

Mr. Parker was also a Foundation Member of the Society of Clerks-at-the-Table in Empire Parliaments. He has been a valuable contributor to our JOURNAL and a most ardent supporter of our Society. His expert advice has been of great usefulness in many directions and his opinions on constitutional and parliamentary matters have always proved most sound. We are, therefore, glad to have Mr. Parker still with us as an ex-Clerk-at-the-Table.

We wish him a happy retirement (although we can scarcely imagine him inactive) with good health in which we should like to have the privilege of including Mrs. Parker.

Wanke, F. E., J.P.—Mr. Wanke, who held the dual office of Clerk of the Legislative Assembly and Clerk of the Parliaments of the State of Victoria, retired on April 26, 1951, when Parliament was in recess, after 45 years of public service, of which 38 years were spent as an officer of Parliament.

On June 20 the Premier and Treasurer (Hon. J. G. B. McDonald) when moving, in the Legislative Assembly, the following Motion:

> That this House places on record its high appreciation of the valuable services rendered to it and to the State of Victoria by Frederick Edward Wanke, Esquire, J.P., as Clerk of the Parliaments and Clerk of the Legislative Assembly, and in the many other important offices held by him during his forty-five years of public service, of which thirty-eight years were spent as an officer of Parliament, and its acknowledgment of the zeal, ability, and courtesy uniformly displayed by him in the discharge of his duties,

referred to the great zeal, ability and courtesy Mr. Wanke displayed in discharging his duties.

The Leader of the Opposition (Hon. T. T. Hollway), in seconding the Motion, concurred with the remarks made by the Premier in relation to Mr. Wanke, who was an entirely impartial officer of the House. He said he did not know what Mr. Wanke's politics were, but never at any time was there the slightest suspicion that any advice which he tendered Mr. Speaker was in any way biased by party politics. He wished Mr. Wanke, on behalf of members of his party, long life and good health.

The Leader of the Labour Party (Hon. John Cain) said that Mr. Wanke's progress to the high office he attained was due to sheer ability.

The Hon. John Lemmon (Father of the House) said that Mr.

Wanke had filled the position of Clerk of the House with all the grace and ability that was necessary for the office.

Mr. Galvin (Deputy Leader of the Labour Party) said he desired to pay a tribute to Mr. Wanke, more especially in his capacity as Secretary of the Victoria Branch of the Commonwealth Parliamentary Association. His efforts on behalf of the Association could not be excelled.

The Speaker (Hon. Sir Archie Michaelis) then said:

I should like to add my tribute to those which have already been paid to Mr. Wanke, and which were more than justified. I was particularly pleased to hear the remarks of the Deputy Leader of the Labour party concerning Mr. Wanke's work as Secretary of the Victorian branch of the Commonwealth Parliamentary Association. From my own experience I know the amount of work and time devoted by this former officer of the House to the interests of overseas and interstate visitors. I would say that what he was able to do in that direction is beyond all telling. The Secretary of our branch of the Association is called upon to meet boats, planes, and trains at all hours of the day and night and is always ready and willing to satisfy the requirements of visiting members of the Association. Mr. Wanke's constant desire was to ensure that his duties to this House were performed efficiently and with due respect to the wishes of members generally. I commend the words of the " Father " of the House—the honourable member for Williamstown—to all honourable members and especially to the new ones who have yet to absorb the atmosphere of this place.

The Motion was agreed to unanimously.

Earlier in the sitting, Mr. Speaker announced the retirement of Mr. Wanke and that in accordance with the powers vested in him, " he had nominated Mr. Hugh Kennedy McLachlan, the Clerk-Assistant, to be the Clerk of the House, Mr. John Archibald Robertson, the Serjeant-at-Arms and Clerk of Committee to be the Clerk-Assistant, and Mr. Leslie Graham McDonald, the Reader and Clerk of the Record, to be the Serjeant-at-Arms and Clerk of Committees; and that the Governor in Council had been pleased to make appointments in accordance with the said nominations, and had been further pleased to appoint Mr. McLachlan to be the Clerk of the Parliaments ".

On the afternoon of the day that Mr. Wanke retired Mr. Speaker and officers of all branches of the Legislative Assembly gathered to bid farewell to their colleague. Mr. Speaker expressed his appreciation of the help Mr. Wanke had given him during the time he had occupied the Chair. Mr. McLachlan said that he took the opportunity of expressing his sincere and personal appreciation of the fellowship that had existed over a period of 34 years, and hoped that during his term of office he would exhibit the integrity and high principles which he always admired in the dealings Mr. Wanke had with members of all political parties. After other officers had supported the remarks of Mr. Speaker and the new Clerk, Mr. Speaker, on behalf of the officers, presented Mr. Wanke with a pair of field-glasses. Appropriate refreshments were then served.

Honours.—On behalf of our Members, we wish to congratulate the undermentioned member of our Society who has been honoured by Her Majesty the Queen since the last issue of the JOURNAL:

C.B.E.—C. K. Murphy, Esq., Clerk of the House of Assembly, Tasmania.

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II. THE CIVIL LIST, 1952

By H. R. M. Farmer

A Senior Clerk in the House of Commons, and Clerk to the Select Committee on the Civil List, Session 1951-52

At the beginning of each reign Parliament has to make provision for the necessary expenses of the Monarch, and, accordingly, in May, 1952, the House of Commons set up a Select Committee on the Civil List.[1] The Committee met on 9 occasions and heard evidence from members of the Royal Household and from Government Departments. Their Report[2] was presented to the House on June 26, and was debated in the House on July 9,[3] when Resolutions, founded on the recommendations in the Report, were agreed to. The Civil List Bill, which was brought in on these Resolutions, received the Royal Assent on August 1.[4]

In the main, the Civil List of 1952 followed the same lines as its predecessors. There is provision for Her Majesty's Privy Purse (Class I), for the salaries and expenses of her Household (Classes II and III), and for Royal Bounty, alms and special services (Class IV). But the Committee and the House were faced on this occasion with a problem not faced for more than a hundred years, namely, that the Queen was a young married woman with every expectation of a lengthy reign of 50 years or more. Provision had therefore to be made for her husband, the Duke of Edinburgh, and for her children, in addition to the normal provision for the Sovereign herself. All this had to be done against the background of rapidly changing economic circumstances. It would be a bold man who would forecast with assurance the trend of costs and prices over the next 50 years, bearing in mind the violent fluctuations of the last half century. The total of the Civil List granted to King George VI in 1937 was £410,000. If the Civil List of the new reign were to follow blindly the trend of prices since 1937, the total would amount to something of the order of £1,000,000. This was clearly an impossible amount to ask the House to vote, so the Committee investigated the matter with considerable care.

Apart from financial considerations, the Committee were concerned (and they mentioned their concern in their Report) with the strain on a young Queen and mother of the multifarious duties which the Sovereign is now expected to perform. They tabulated them as follows—" the day to day study of State papers, which are increasing in number, and the signature of documents, the granting of audiences to official visitors, and public functions and appearances ". They stated that " in spite of the assistance of a devoted staff . . . the burden of Her Majesty's duties is still formidable and is likely to remain so, and there is little respite even in what are nominally holiday periods ". It was pointed out that the changed status of the Commonwealth countries has meant that the Queen

has direct relations with a number of Governments, members of which are constantly visiting this country and have the right to be received in audience. Moreover, the number of ambassadors and representatives in London of foreign countries has increased, with the necessary corollary of a greatly increased number of audiences.

The Committee also drew attention to the number of public functions which the Sovereign is now expected to attend, and pointed out that at the present there were comparatively few other members of the Royal Family who were in a position to help with these duties. Moreover, with the increasing facilities of air travel, it was to be expected that the Queen would pay more frequent visits to other countries of the Commonwealth and Empire.

Never before in a Report on the Civil List had there been an attempt to summarise the traditional tasks and duties of the Sovereign. It was done in order to see whether a desire for a reduction in the Civil List could not be achieved partly by a reduction in the royal burden, a step which would be welcomed by all who had the well-being of the Queen at heart. This point was taken up by many speakers in the debate in the House, particularly by members on the Opposition benches, who suggested that the days were past when garden parties and presentation parties were considered necessary, and they could well be abandoned. Members on all sides of the House agreed, however, with the Committee's opinion that a certain amount of ceremonial and pageantry were popular and should not be lightly discarded. Important changes have, in fact, been made in the extent and character of State and ceremonial functions in recent years, and there did not seem, therefore, great scope for economies in this direction.

Another method of reducing the amount of the Civil List, a method which began in the last reign and was strongly advocated by the Opposition in this, is the transfer of a considerable block of expenditure on the upkeep of the various palaces to the Royal Palaces Vote of the Ministry of Works. The Committee recommended that the wages of the industrial staff engaged on the maintenance of the Royal Palaces should be so transferred, thereby relieving the Civil List of £25,000 a year. Many members suggested that far more could be transferred, particularly the cost of the Royal Mews. On the other hand, the Committee made the point that the Royal Household is both an establishment of State and a personal household and they felt unable to recommend any further transfers.

Nevertheless, the Committee found that very considerable economies had been achieved in the administration of the Royal Household in recent years. The Civil List of 1937 showed a reduction of £60,000 on the Civil List of 1910, a reduction of which part represented a transfer to Departmental Votes, but nearly £40,000 constituted a genuine curtailment of the amount available

for expenditure. In addition, figures were quoted showing that, although staff had been reduced by 100 since 1937, the cost of salaries and wages rose by £50,000 by 1951, and that, although the number of horses in the Royal Mews had been reduced from 86 to 35, the cost of forage in 1951 was higher than in 1937. Moreover, the Committee were disturbed to learn that some of the members of the Household and more senior officials of the staff had for several years accepted remuneration lower than that appropriate to their duties, in order to lighten the burden on the Civil List.

The Committee were satisfied that there was no scope for any further economies on a large scale. They had, however, to cover the existing deficit of £30,000 in the last full year of the last reign and provide some measure of safeguard against any further increases in costs and prices. They therefore recommended that there should be included in the Civil List a margin for contingencies of £95,000, which they appropriated to a new Class V—Supplementary Provision. Of this £95,000 they recommended that the Sovereign should utilise up to a maximum of £25,000 a year to meet the unavoidable expenses on public service of such members of the Royal Family for whom no financial provision is otherwise made, *e.g.*, the Duchess of Kent and her family. Any money out of this contingencies margin which is not spent in any year to meet any deficit on Classes II and III is to be transferred to the keeping of the Royal Trustees, who would be the Prime Minister and Chancellor of the Exchequer of the day, together with the Keeper of the Privy Purse.

The setting up of this fund will have one interesting effect, to which the Committee drew attention. In the past, any savings on Classes II and III in any year passed automatically to the Privy Purse. This gave the Sovereign the opportunity of making provision for members of her family for whom no provision is made by Parliament, *e.g.*, grandchildren. The Committee, while thinking it impossible to prescribe at the beginning of what may well be a long reign the final disposal of the sums which may accumulate in the hands of the Royal Trustees, expressed the hope that Parliament, at the outset of the next reign, would pay attention to the effects of this important change in procedure.

This ingenious solution of the difficulty entailed in making provision for possibly 50 years was agreed to by the Committee and the House, but not before considerable debate and, in particular, one important alternative suggestion by the Opposition. They tried to obtain approval for the suggestion that there should be a periodic review of the Civil List, say every 10 years. Amendments were moved to this effect both in Committee and in the House by the Leader of the Opposition, Mr. Attlee, and he was strongly supported by all members of the Labour Party. The Government, however, refused to accept the amendment, on the grounds that it

would be against the invariable practice and tradition of the past not to fix the amount of the Civil List at the beginning of the reign for the reason that a constitutional monarchy must be kept above politics. Too frequent reviews of the financial affairs of the Sovereign might well lead to debates which were not in the best interests of the relationship of Parliament and the Crown. The Opposition were, however, unconvinced by this argument and carried their amendment to a division, in which they were defeated by 239 votes to 211.[5] The Opposition also moved a reasoned amendment on the Second Reading of the Bill, containing the same proposals. This was also defeated by 249 votes to 224.[6]

The other item in the Committee's proposals which led to some controversy was the provision for the Duke of Cornwall. The revenues of the Duchy of Cornwall amount to about £90,000 a year. If no other arrangements were made, these revenues would accrue entirely to the Duke. In the last two reigns the revenues of the Duchy were vested in the King, and, although arrangements were made to meet the needs of a Duke if he had been born, the revenues were applied in relief of the Civil List. The arrangements proposed for the present reign were that up to the age of 18 the present Duke should receive one-ninth, *i.e.*, about £10,000 a year, from 18 to 21 he should receive £30,000, and thereafter, of course, he would receive the whole of the revenues, as is his right. The balance during the period until he reaches the age of 21 should be applied in relief of the Civil List.

The Opposition took the view that such a provision for a boy only 4 years of age was too much and that his upbringing and education up to the age of 18 should be the responsibility of his parents. An amendment was therefore moved which, if passed, would have had the effect of making the whole of the revenues of the Duchy accrue to the Exchequer until the Duke reached the age of 18. The Chancellor of the Exchequer refused to accept the proposal. He pointed out that over the next 18 years the Exchequer, under the Committee's proposals, would be getting £1,380,000 from revenues which traditionally belong to the Heir to the Throne, and claimed that they had made a very good bargain in that this sum almost exactly equalled the amount of the provision for the contingency margin over the same period. The amendment was pressed to a division, but was defeated by 231 votes to 197.[7]

The only other item in the Civil List which did not follow precedent was the proposal to grant £15,000 a year to daughters of the Sovereign on marriage. This provision was also made to apply to Princess Margaret. In previous reigns separate proposals had to be placed before Parliament on each occasion of the marriage of a daughter of the Sovereign, but under the present arrangements this procedure will be unnecessary. An amendment to the Report to

leave out this recommendation and to revert to the old system was moved in the Committee and was put down to be moved in the House, but was not called.

To sum up, the Civil List of 1952 followed in the main the traditional lines of previous Civil Lists. The three main novel features were the institution of the contingencies margin, the provision made for the Duke of Cornwall, and the inclusion of a sum to be granted on marriage to the sister and daughters of the Queen. The most remarkable feature of the discussions, however, was the almost unanimous desire to make full and adequate provision for the Sovereign and the Royal Family. There were, of course, differences of opinion about exactly how much was adequate, but none of the official Opposition amendments was aimed at reducing the Civil List much below the amount voted in previous reigns. There was far greater stress on the necessity of reducing the burden of public duties which the Queen has to bear, not so much for financial reasons, but because all Members wished her to be able also to fulfil her duties as a wife and mother. The whole tone of the debates was a great tribute to the affection felt on all sides for the occupant of the Throne, and a sign of the respect which is now inspired by constitutional monarchy in this country.

Proceedings in the Lords.[8]—On May 20, a Message from the Queen was delivered by the Marquess of Salisbury and read by the Lord Chancellor as follows:

> Her Majesty, being desirous that provision shall be made for His Royal Highness The Duke of Edinburgh, for Her Majesty's children other than His Royal Highness The Duke of Cornwall, for Her Royal Highness The Princess Margaret in the event of Her marrying, and for any future wife of His Royal Highness The Duke of Cornwall, in the event of her surviving His Royal Highness, relies on the attachment of the House of Lords to Her person and Family to concur in the adoption of such measures as may be suitable to the occasion.[9]

On May 21, the House resolved that an humble Address be presented to Her Majesty as follows:

> We, Your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal in Parliament assembled, beg leave to return to Your Majesty the Thanks of this House for Your Majesty's most gracious Message and to assure Your Majesty that this House, always desirous of availing itself of every opportunity to manifest its dutiful attachment to Your Majesty's Royal Person and Family, will cheerfully concur in all such measures as shall be necessary and proper for giving effect to the object of Your Majesty's Message.[10]

Agreed to, nemine dissentiente: *Ordered*, that the said Address be presented to Her Majesty by the Lords with White Staves.

This procedure accords with the practice as described by Erskine May. But, in fact, at the accession of King Edward VIII and King George VI, no Royal Message was sent to the Lords on the Civil

List, nor was a Message sent before the First Reading of the Princess Elizabeth's and Duke of Edinburgh's Annuities Bill, 1947. Messages were, however, sent to the Lords at the accession of King Edward VII and King George V. The procedure followed in 1952 is, therefore, a reversion to ancient precedent. It is to be noted that the Lords in their Address say that they will " cheerfully *concur* in all such measures as shall be necessary " for the Civil List. The Civil List Bills of 1936, 1937 and 1952 were not Money Bills within the meaning of the Parliament Act, 1911 (though the Bill of 1947 was); the expression of the Lords' intention cheerfully to concur in the passage of such Bills was not, therefore, altogether an empty form.

[1] 501 *Hans.* cc. 271-5. [2] H.C. 224 (1951-52). [3] 503 *Hans.* cc. 1319-1451.
[4] 504 *Hans.* c. 1853. [5] 503 *Hans.* c. 1434. [6] *Ibid.* 1989. [7] *Ibid.* 1447.
[8] The following paragraphs are written by the editors. [9] 176 *Lords Hans.* 1133.
[10] *Ibid.* 1227.

III. THE QUEEN'S CONSENT

By the Editors

The question of the Queen's Consent on a Bill affecting the Royal Prerogative (as opposed to Her Consent on a Bill touching the property of the Crown, the Duchy of Lancaster or the Duchy of Cornwall) was the subject of debate in both Houses during 1952. In the House of Commons, on April 2, 1952 (498 *Hans.* 1674), the Speaker ruled that the Queen's Consent was not required for a Bill " to ensure that at least two out of three members of the Cabinet shall be members of the Commons House of Parliament ". In the Lords, on December 4 (179 *Hans.* 749), the Viscount Simon moved:

> That an humble Address be presented to Her Majesty praying that Her Majesty may be graciously pleased to allow that Her undoubted Prerogative may not stand in the way of the consideration by Parliament, during the present Session, of any measure providing for the creation of Life Peerages that may be introduced.

In moving for this Address, Lord Simon briefly referred to the history of the matter in the Lords, which is reviewed below.

On December 9 (179 *Hans.* 815) the Queen replied by a Message delivered by the Lord Chamberlain of the Household:

> I have received your Address and, relying on the wisdom of My Parliament, I desire that My Prerogative, in so far as it relates to the creation of Peerages, should not stand in the way of consideration by Parliament, during the present Session, of any measure that may be introduced providing for the creation of Life Peerages.

This wording, of course, does not give the Queen's Consent to the actual Bill (which perhaps is not yet drafted): nor yet does it give Her Majesty's Consent to the introduction of the Bill, for either House is free to discuss a Bill on any subject. The formula used in Her Majesty's answer is traditional, and very carefully worded.

Erskine May (15th edition, p. 801) speaking of the practice of obtaining the Royal Consent to a Bill touching the Prerogative, says:

> This usage is not binding upon Parliament: but if, without the consent of the Crown previously signified, Parliament should dispose of the interests or affect the Prerogative of the Crown, the Crown could still protect itself, in a constitutional manner, by the refusal of the Royal Assent to the Bill. It is one of the advantages of this usage, that it obviates the necessity of resorting to the exercise of that Prerogative.

It is usual to describe the practice of Parliament on this matter by saying that, where a proposed Bill, not mentioned in the Queen's Speech, deals exclusively with a matter which is entirely within the Royal Prerogative, the Consent of the Queen should be obtained by Address before the introduction of the Bill. Where the principle of the Bill directly affects the Prerogative, the Queen's Consent is given, in each House, by a Minister, on the Second Reading. But where the Prerogative (or Crown lands, etc.) is only incidentally affected by the Bill, Her Majesty's Consent is given on the Third Reading, in order that all amendments may be covered thereby.

The leading case on this subject in modern times, so far as the Lords are concerned, is that of the St. Asaph and Bangor Dioceses Bill of 1844. Several Bills with this title had been introduced in the Lords by private members during the years following 1842; but the Government was reluctant to allow them to pass, presumably on the ground that they would involve an increase in the number of bishops sitting in that House. The Bill of 1844, however, was on the point of passing when a peer raised the question of the Queen's Consent. The Bill having already been read a Third Time, the Lord Chancellor desired to be instructed by the House whether it was proper for him to put the Question " That this Bill do pass " without the Queen's Consent having been obtained. The matter was referred to a Select Committee, and its Report (*Lords Journals* 76, p. 478) was to the effect that the Queen's Consent was necessary on that Bill, and that it had been the custom to give Her Majesty's Consent on various stages of such Bills. After this, the Bill was withdrawn, and a settlement of the question of the number of bishops in the Lords was made in another manner.

In 1911, just before the passage of the Parliament Bill, two Bills were introduced in the Upper House on the subject of Lords Reform. On that occasion Lord Lansdowne maintained that no Bill touching the Royal Prerogative should be introduced into either House without the previous sanction of the Crown. " Although this assent

may be signified at any stage", he said, "it is the proper course to obtain it before the introduction of the Bill". Lord Morley, for the Government, said:

> So far as I can make out, precedents show that . . . it is immaterial at what stage the assent of the Crown was given to a Bill. The only necessity, I gather, was that it should be gained before the Bill was submitted to the Sovereign for assent. (VII, *Hans.* 769.)

In the end, of course, neither of these two Bills came to anything in view of the passage of the Parliament Act.

On December 19, 1933, the late Lord Salisbury, after notice given, moved to introduce a Bill for the reform of the House of Lords, and on that occasion the question was raised by Lord Ponsonby of Shulbrede whether he should not previously have moved for an Address asking for His Majesty's Consent to the matter, which fell wholly within the Prerogative, being the subject of a Bill. Lord Salisbury, Lord Reading and Lord Hailsham maintained on this occasion that, although His Majesty's Consent was required before the Bill was passed by the House, yet it was not absolutely necessary to obtain such Consent before the introduction of the Bill, and accordingly the Bill was, after a division, read a first time (90 *Hans.* 595). On February 7, Lord Salisbury moved for an Address (90 *Hans.* 784), and His Majesty granted his Consent by Message on the 20th. The Bill was read a second time, after prolonged debate, on May 10.

In the next year a similar Bill was introduced by Lord Rockley, and in this case the King's Consent to the discussion of a Bill on this matter was obtained by an Address sent before the introduction of the Bill. Speaking on the Motion for this Address Lord Rockley said:

> Any Bill dealing with the constitution of this House necessarily touches the Royal Prerogative . . . Any Bill of which that can be said ought not to be introduced into either House of Parliament without the previous sanction of the Crown. . . . It is in accordance with the practice of Parliament and with the respect which we owe to the Crown that that preliminary concurrence should be obtained.

Two days later he is reported as having said:

> We therefore draw the conclusion that if a Bill affecting the Royal Prerogative is brought forward . . . it is indispensable that the Royal Assent should be signified before the Bill has been actually introduced.

The view of Lord Hailsham, Leader of the House, was expressed in these words:

> Therefore, although in no way committing the Government or any member of the Government to any opinion upon the actual merits of the proposal, which so far has only been indicated in outline, we propose to offer no sort of opposition to the suggestion that an Address be passed which will ask His Majesty to permit a discussion of the Bill; and if your Lordships see fit to pass such an Address we shall deem it our duty to tender to His Majesty

the advice that the Address be acceded to. That, I think, is again in accordance with precedent.

The late Lord Salisbury said:

Therefore, we may now look upon it as a settled order in a matter dealing with the constitution of your Lordships' House—the personnel at any rate of your Lordships' House—that it cannot be dealt with except following upon a Motion addressed to the Crown,

and he added:

but that Motion may be made at any time during the passage of the Bill through Parliament. (96 *Hans.* 28.)

Lord Simon, in moving for the Address, made no reference to the subject-matter of his Bill*, but simply said:

I have it in mind to introduce into this House a Bill which would authorise the creation by Her Majesty of a limited number of Life Peerages, not more than ten in any calendar year. Any legislative proposal of that sort, as I understand, by the practice of the House is proper only if at some suitable stage the permission of the Crown is given to the consideration of such a Bill. What I am now doing is purely preliminary to that.

The present Lord Salisbury, Leader of the House, replied:

There is, I imagine, no question in the mind of any of your Lordships (there certainly is none in mine) that anyone should oppose this Motion. It does not commit the Government; it does not commit any noble Lord in any part of the House, except in so far as the noble and learned Viscount himself is, I suppose, committed, or will be committed, to the provisions of his own Bill. The Motion is introduced, as the noble and learned Viscount has explained, merely to conform with precedent regarding Bills which might be thought to touch the Royal Prerogative. In effect, as I understand it, the Motion asks Her Majesty to allow the noble and learned Viscount's Bill to be discussed. This is the purpose of the Motion.

From the above precedents, it seems clear that where the principle of a Bill is directed wholly upon a matter within the Royal Prerogative, then, although it is not binding upon the House to obtain the Consent of the Sovereign before the introduction of the Bill, yet since such Consent must be obtained at some stage during the passage of the Bill, it is by now almost the settled procedure that an Address for the Queen's Consent should be moved before the introduction of the Bill.

* The Life Peers Bill, which will be the subject of an article in the next volume of this JOURNAL.

IV. THE FOURTH CLERK-AT-THE-TABLE

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

Most modern developments in the contacts between the clerks at Westminster and their colleagues in the Commonwealth can be traced to Sir Bryan Fell, and the appointment of a Fourth Clerk-at-the-Table of the House of Commons is among them.

The story begins as far back as 1927. In that year Mr. (now Sir Bryan) Fell appeared before a Colonial Office Conference to urge (i) that the Governor of a Colony should at the earliest possible moment cease to preside over the Legislative Council of his Colony, and (ii) that steps should be taken to encourage Legislative Councils to adhere as far as possible to the procedure and practice of the House of Commons. Fell urged that as the Colonies made their way towards self-government, a common parliamentary practice would prove, after the Crown, to be the most powerful link between Great Britain and the Commonwealth.

On the first of these matters there was considerable divergence of view and no decision was, I think, reached; but on the second proposal it was suggested that a Model Code of Standing Orders be drawn up by an inter-departmental Committee from the Colonial and House of Commons Offices. That Committee, on which the officers of the House of Commons were the Clerk of the House (Sir Lonsdale Webster, K.C.B.), Mr. Fell, Captain Diver and myself, worked at such speed that the Model Code was issued before the end of 1928. From that time inquiries on matters relating to parliamentary procedure and practice, which up to 1928 had been comparatively infrequent, gradually grew into a steady stream, while the Colonial Office continued to seek the co-operation of the officers of the House of Commons whenever matters arising out of or demanding an interpretation of Standing Orders were brought before them. As the assistance sought was " semi-official ", it was convenient for them to be dealt with by a man like Fell who had the necessary knowledge and experience but who could be approached on a lower level than that of the Permanent Secretary and the Clerk of the House.

Sir Bryan Fell retired in 1937 and, as I had been his " bottle-washer " at the Colonial Conference in 1927 and had assisted him thereafter, his mantle fell on me. Until the war the bulk of inquiries which reached me came through the Colonial Office and dealt usually with individual points, though I remember in 1939 discussing a complete revision of the Standing Orders of Malta with their then Legal Secretary. But after the war conditions changed and Colony after Colony, as their constitutions were revised, sought advice and assistance for a complete redraft of their Standing Orders. Moreover, it was recognised (in the first place by Ceylon) that redrafting

would be easier if undertaken on the spot, where all concerned could be consulted when necessary and where the background of local tradition and practice could be studied. So an officer of the House of Commons has assisted " on the spot " to draft or redraft the Standing Orders of Ceylon, the Sudan, Nigeria and the Central African Federation.

Moreover, between 1945 and 1947, and largely at the instance of Sir Gilbert (now Lord) Campion, the co-operation of the Westminster House of Commons staff with their colleagues overseas was developed, by overseas clerks being attached to the offices of the Clerk of the House, in addition to clerks from Westminster going overseas. Sir Frederic Metcalfe has continued to encourage the expansion of both these methods of liaison with overseas clerks, which have proved of such value to the interpretation of the spirit which animates the working of the British House of Commons.

At the 1952 Annual General Meeting of the British Branch of the Commonwealth Parliamentary Association it was pointed out that these services were putting a heavy burden on the existing staff of the Clerk's Department, not least upon those who by undertaking more work at home enabled a colleague to be released for work overseas. Mr. Dodds-Parker, therefore, proposed that a Fourth Clerk-at-the-Table should be appointed to assist in these various activities to which the Branch attached great importance. Mr. Speaker, in his capacity as Chairman of the meeting, promised to approach his *alter ego*, the Chairman of the Commissioners for regulating the offices of the House of Commons | On June 11 of that year the matter was carried a step further by being raised on the adjournment of the House at the end of Business by Mr. Ian Winterbottom. In the course of that half-an-hour's debate[1] not only Mr. Winterbottom but three other members from both sides of the House spoke in favour of the proposal and, in winding up, the Minister of State said that his Minister would certainly consult the Speaker and see what could be done to meet the wishes of members. On all sides it was agreed that the new appointment must be linked with the Table. For only in this way could a clerk, while being left free to travel, be enabled to speak with the authority and knowledge acquired from experience at the Table of the House and to keep abreast of all procedural trends in the House of Commons itself.

On July 30[2] Mr. Winterbottom asked the Secretary of State for the Colonies what steps he had taken to implement the undertaking of June 11, and was told the Secretary of State had written to the Speaker and he understood that Mr. Speaker had taken the matter up with the other Commissioners. Later in the year the Commissioners agreed to the appointment of a Fourth Clerk-at-the-Table with the special duty of advising colonial legislatures on matters of parliamentary procedure. The Commissioners made two con-

ditions to the appointment, (*a*) that the need for the post should be reviewed in 5 years, and (*b*) that all expenses in connection with any visits the Fourth Clerk might make to Parliaments overseas would be paid by the Government inviting him.

Mr. D. W. S. Lidderdale was appointed to the new post with effect from April 21, 1953. Mr. Lidderdale's duties, as laid down by the Clerk of the House, are:

(*a*) to sit at the Table of the House at all convenient times;
(*b*) to go overseas when asked to assist legislatures in the Commonwealth;
(*c*) to be responsible to the Clerk for all correspondence with
  (i) The Commonwealth Relations and Colonial Offices;
  (ii) Parliamentary authorities of the Commonwealth;
  (iii) Foreign parliamentary authorities including the Council of Europe and the Inter-Parliamentary Union;
(*d*) to arrange the attachment of clerks from overseas; to draw up a programme for them and to supervise and assist each of them individually;
(*e*) to represent the Clerk on committees dealing with courses for overseas Speakers and legislators; and
(*f*) to assist in drafting or redrafting the Standing Orders of overseas legislatures including, when necessary, the Model.

At a conference of Clerks-at-the-Table held shortly before the Coronation the new appointment was warmly welcomed and, following on a suggestion made at that meeting, a notification of it was sent by the Colonial Office to all Colonies likely to be interested.

[1] 502 *Com. Hans.*, cc. 363-72. [2] 504 *Com. Hans.*, c. 1458.

V. THE SELECT COMMITTEE ON THE ARMY ACT AND AIR FORCE ACT

By D. Scott

A Senior Clerk in the House of Commons, and Clerk to the Select Committee on the Army Act and Air Force Act

On May 22, 1952, a Select Committee was appointed " to consider the Army Act and the Air Force Act, and to make recommendations for the Amendment thereof; and to consider and report on the advisability of enacting the said Acts or parts thereof permanently ".

The Committee met for the first time on May 29, when Sir Patrick Spens, Q.C. (Kensington, S.), was called to the Chair. Among the other members were a former Secretary of State for Air, the Rt. Hon. Arthur Henderson, Q.C. (Rowley Regis and Tipton), and the present

Parliamentary Under-Secretary of State for War, Mr. James Hutchison (Scotstoun). The Committee were given special power " to communicate from time to time with the Departmental Drafting Committee to be appointed to assist them by the Secretary of State for War and the Secretary of State for Air ". This power considerably helped the work of the Committee by permitting them to confer with members of the Departmental Committee on technical drafting points during the preparation of the successive Reports presented by the Committee of that Session and its successor in the following Session.

The reasons for appointing this Select Committee together with the Departmental Drafting Committee were discussed in the House during the Committee Stage of the Army and Air Force (Annual) Bill, 1952, on April 2 and 3.[1] A very large number of amendments had been put down by members of the Opposition, in addition to important proposals contained in the Annual Bill itself. In his opening remarks, the Secretary of State for War, the Rt. Hon. Antony Head (Carshalton), explained the proposal:[2]

I think that hon. Members on both sides will agree that in the consideration of the Bill which is now before us the Committee finds itself in something of a dilemma. We have on the Order Paper about 107 Amendments and, in addition, some very substantial alterations to the Bill which had been proposed by the Government. I do not think it could be said, and I do not think I ever have said, that the majority of the new Clauses proposed by the Opposition are either frivolous or unjustified; but the truth is that with the exception of a few minor Amendments this Act has never been reviewed since 1881, and even the numerous proposals now on the Order Paper represent only a fraction of the alterations which might well be made.

I think it is apparent to all hon. Members, especially those who have taken an interest in yesterday's discussion, that the Committee could not properly discharge its duties of considering the Bill and the numerous Amendments and new Clauses without exceeding the date on which the Bill must be passed. As a result of preliminary discussion, which I must say was very helpful, with the right hon. Member for Dundee, West (Mr. Strachey), it has been agreed through the usual channels that the best solution seems to lie in the appointment of a Departmental committee comprising representatives of both parties and experts from the Service Ministries concerned, and from Parliamentary Counsel, in order that they could carry out a thorough review of the whole Act with a view to putting forward their proposals for amendment.

If such a course is adopted adequate time would be available for expert consideration of the Measure, a contingency which I think Members will agree is unlikely to arise if the whole matter has to be discussed on the Floor of the House. This Committee would be appointed by myself in conjunction with my noble Friend the Secretary of State for Air, and details regarding its composition and terms of reference would be worked out through the usual channels.

This committee would then put forward its proposals to Her Majesty's Government before the end of this Session with a view to a revised Bill coming before the House during 1953. It might be for consideration that a Select Committee should be appointed to consider these proposals before being discussed by the House itself. I believe that it would be agreed on all sides that the Act as it now stands is so antiquated as to be unworthy and ill-suited to the Army and Air Force of today.

The existing Army Act, which the Air Force Act follows in almost every particular, is based upon the Army Discipline and Regulation Act, 1879. This Act in form followed a Draft Bill which was considered by the Select Committee on Mutiny and Marine Mutiny Acts, which was set up on April 11, and reported on July 26, 1878.[3] The Act of 1879 consolidated and clarified the military law of that period, as it had grown up over the centuries, in successive Mutiny and Marine Mutiny Acts, and in the Articles of War.

The principle upon which the Committees of the last 2 Sessions have worked may be expressed in the words of the late Duke of Cambridge, then Commander-in-Chief, quoted in the Report of 1878, " I certainly think that every thing connected with Military Law should be made clear and simple, so that he who runs may read . . ." After 8 meetings the Committee of Session 1951-52 made their First Report[4] on July 17, 1952, and explained the procedure they had decided to adopt, in the following words of paragraph 2 of their Report:

> 2. At an early stage, Your Committee decided to consider the Parts of the Army Act and the Air Force Act in the following order: Part III (Billeting and Impressment of Carriages, etc.), Part II (Enlistment), Part I (Discipline) and Part IV (General Provisions). They considered that it would consequently be convenient to report to the House on each Part in turn, so as to enable interested individuals and bodies, such as local authorities, to have an early opportunity in which to form and express their views on the recommendations.

The First Report accordingly set out in an Appendix the Draft Provisions which they recommended for Part III. These had been drafted by Mr. P. H. Sée, C.B., one of the Parliamentary Counsel and a member of the Departmental Drafting Committee. They commented on their recommendations in paragraphs 5 and 6 of their Report, as follows:

> 5. Part III of the present Army Act is based upon procedures and traditions of billeting and requisition, referred to as ' impressment ' in the existing Act, some of which date from the seventeenth century, and Your Committee are of the opinion that the whole of this part of the Act is obsolete and therefore requires re-drafting in its entirety.
>
> 6. In the new draft clauses which Your Committee propose they have abandoned the old conception of a ' route ' which could be used at any time to provide billeting for troops and animals on the move and for the impressment of carriages along the line of march, and have in its place, suggested that billeting and requisitioning in peacetime should be restricted to those occasions when it appears to the Secretary of State that the public interest so requires. Your Committee suggest that when billeting takes place it should, where possible, be in accordance with a scheme adopted by a local authority and that, broadly speaking, any public building could, if necessary, be used. The draft clauses which Your Committee propose provide that any employment of these powers must be reported to Parliament and that they cannot be exercised for longer than thirty days unless both Houses of Parliament so resolve.

After a further 8 meetings, of which 3 took place during the summer adjournment, and at which they took evidence from Lieut.-

General Sir Kenneth McLean, K.B.E., C.B., Air Commodore G. I. L. Saye, C.B., O.B.E., A.F.C., and Mr. See, the Committee made their Second Report on October 28.[5] This was a longer document than the first, and consisted largely in a commentary on the draft clauses which they recommended for dealing with Part II of the Acts. The draft clauses recommended were contained in Appendices I and III. The first Appendix contained the clauses recommended by agreement with the Departmental Drafting Committee. Appendix III contained " Special Provisions as to National Servicemen ". Paragraph 8 of the Report sets out the Committee's views on this as follows:

8. *Parents' consent to the taking of regular engagements by minors.* A suggestion was made that parents' consent should be required generally to the enlistment in the regular forces of minors. This suggestion led to long debates. Your Committee came to the conclusion that any such general provision would be administratively unworkable, and that as the chief ground for the suggestion was really to be found in the fact that instances had occurred in which parents of national service men had complained to members of the Committee because their sons without their consent had taken up regular engagements whilst under the military influences of their national service and away from parental advice. Your Committee confined their later discussions to the desirability of requiring either prior parental consent to the enlistment of serving national service men or official notification of all such enlistments to parents with a right to parents to object, if they so desired, within a given period. Although the Departmental Drafting Committee informed Your Committee that the Army and Air Councils were not in favour of any amendment, a majority of Your Committee considered that the removal of any ground for parental complaints was sufficiently important to require an alteration of the law. Your Committee therefore, whilst realising that there are administrative difficulties in the method of securing parental consent which they propose, nevertheless recommend that section 83 of the Army Act should be amended as indicated in Appendix III. Such amendments provide that the man's Commanding Officer should notify the man's recorded next-of-kin of his intention to change to a regular engagement, and give the man's parent or guardian twenty-eight days in which to send an objection to a prescribed officer.

Appendix II contained " Draft Provisions for dealing with Conscientious Objections on transition from Boy's Service to Man's Service ", which were drafted for the consideration of the Committee, but the enactment of which was not recommended, for the reasons set out in the following paragraph 6 of the Report:

6. *Conscientious objectors.* Your Committee considered the question of providing machinery by which a soldier who had been enlisted as a boy could, on reaching the age of eighteen, have a right to apply for a discharge on the ground of conscientious objection. They had draft clauses prepared with the object of making statutory provision for this contingency, and these are set out in Appendix II. They were, however, informed in a memorandum from the Departmental Drafting Committee that such a contingency had never arisen in the Army or in the Air Force, but that a *bona fide* case would certainly be dealt with by discharge or by restriction to non-combatant duties. It was stated in the memorandum that the Board of Admiralty were in full agreement with this. After long consideration, and in view of the

complexity of the new clauses required, Your Committee recommend that any such case should be dealt with administratively by a member of the Army Council or the Air Council.

As they had not been able to complete their inquiry, they recommended " that a committee on the same subject be appointed in the next Session of Parliament ". Early in the next Session, a new Committee was, on November 7, appointed accordingly, with the same order of reference, and with almost identical membership. They devoted the whole Session to considering Part I of the Acts and certain sections of Part IV dealing with courts-martial, prisons and detention barracks, which it was convenient to deal with at the same time. They reported after 32 meetings, on October 20, 1953, but the Report[6] has not yet (at the time of writing) been published.

They also found it expedient to make a Special Report[7] on March 31, 1953, in order to explain to the House their reasons for not making a Report before the Army and Air Force (Annual) Bill of 1953 was due to be considered. After explaining that they had still to consider a number of sections in Part I of the Acts, as well as Parts IV and V, they stated:

2. Your Committee consider that, until they have dealt with the remaining Parts and provisions of the Acts, and particularly the sections on Definitions, they will not be able to prepare any final recommendations, even on earlier Parts of the Acts which have been provisionally considered. They are satisfied that they may require to make consequential recommendations about those Parts, including Parts II and III, when they have completed their examination of the whole of the Acts.

3. Your Committee have therefore decided not to attempt to make a Report embodying recommendations for revised provisions in the Army Act and Air Force Act before the Second Reading and Committee stage of this year's Army and Air Force (Annual) Bill are taken in the House.

4. Furthermore, Your Committee recommend that, for the reasons stated in paragraph 2, no steps should be taken during this Session to embody the recommendations which were made by the Committee of last Session for the revision of Parts II and III of the Acts.

In the new Session which has just begun, another Committee with the same order of reference and membership has been appointed (November 4), but has not yet met. There remains for their consideration the rest of Part IV and Part V, and the question which provisions of the Acts and of the recommendations of the successive Committees should be enacted in a permanent and which in a temporary form.

[1] 498 *Hans.*, cc. 1806-31, and 2043-65. [2] *Ibid.*, cc. 1806-7. [3] H.C. (1878) 316.
[4] H.C. (1951-52) 244. [5] H.C. (1951-52) 331. [6] H.C. (1952-53) 289.
[7] H.C. (1952-53) 140.

VI. DELEGATED LEGISLATION: DEBATES IN THE LORDS

By the Editors

During 1952 a notable series of debates took place in the Lords on the subject of parliamentary control of delegated legislation and on the continuance and form of Defence Regulations and of emergency legislation, which enabled Ministers to make regulations covering almost every aspect of the life of the nation. The matter first arose on July 16, when Lord Samuel moved a comprehensive Motion on the Liberties of the Subject in the following terms:

That this House, considering that various encroachments upon the Liberties of the Subject have taken place in recent years, would favour the introduction of legislation to restore and preserve those liberties; and in particular—(*a*) to provide for more effective Parliamentary control over the issue and administration by Government Departments of statutory orders, rules and regulations; (*b*) to enable Parliament to exercise greater control over the Boards of Nationalised industries and services; (*c*) to implement those recommendations of the Committee on Ministers' Powers, 1932, which have not yet been carried into effect; (*d*) to restrict the authority given to departmental officials to enter and search private premises; (*e*) to transfer to the Courts of Law, at the option of the defendant, the power given to Marketing Boards to impose penalties; (*f*) to abolish the existing distinction between public authorities and private persons in respect of the limitation of actions; and (*g*) except where the special nature of the employment may require it, to make it unlawful for public authorities or private employers to impose any political racial or religious test as a condition of employment.[1]

The Liberal Party in the Lords had, two years previously, introduced a Bill—" Liberties of the Subject Bill "—embodying these Resolutions; but Lord Samuel said that he did not propose to reintroduce this Bill as it was, in his view, the duty of the Government to do so. He recalled that Sir Henry Campbell-Bannerman had introduced Resolutions on the subject of the reform of the House of Lords, which were subsequently embodied in the Parliament Act of 1911, and that the Bill which introduced women's suffrage in the United Kingdom in 1918 had also been preceded by a Resolution on the subject.

In moving his Resolutions, Lord Samuel first suggested that it might be possible to amend Statutory Instruments which were laid before the House upon being made as had already been provided for in the case of Orders in Council under the Government of India Act, 1935. In objecting to this suggestion, the Lord Chancellor pointed out that it would involve, in effect, having a Committee stage on such Instruments and the passage of Messages between the 2 Houses, with all the attendant complication and delay. Lord Milner of Leeds brought forward the suggestion that a committee should be set up to examine all Bills which authorised Ministers to make delegated legislation. It was at this stage, he felt, that most might be done to ensure adequate parliamentary control over

Statutory Instruments, etc. Lord Stansgate pointed out that although the House of Lords had lost its full legislative powers in 1911, it still had equal power with the Commons to veto delegated legislation, though in fact the Lords had never exercised it, and in his view it would be improper for them to do so. Lord Jowitt reminded the House that although, in the view of many people, the spate of delegated legislation was primarily due to the war, and was afterwards carried on by the Labour Party for their own ends, yet in fact there were now (in 1952) about 2,000 Statutory Instruments made every year, and that this number was almost exactly the same as in 1938. But, said Lord Simon, before the war Statutory Rules and Orders had been made merely for the purpose of giving detailed application to particular Acts of Parliament; now, under Acts drawn in the widest and vaguest possible terms, whole spheres of the life of the nation were controlled by Regulations. This was the important new factor in the situation. In replying for the Government, the Marquess of Salisbury suggested that, even under the existing procedure, there was no objection to the laying of Instruments in draft before Parliament in order that they might be debated. If the Government became convinced by the debate that alterations were desirable, then amendments could be incorporated in the Order when it was finally made and laid before the House.

In the event, Lord Samuel's Motion was shorn of its specific Resolutions and was passed in the form: " That this House, considering that various encroachments upon the liberties of the subject have taken place in recent years, would favour the progressive restoration of such liberties as and when the national situation allows."[2]

At the beginning of the ensuing Session, the matter was raised again on a number of occasions and in various forms. In the first place, the Emergency Laws (Miscellaneous Provisions) Bill was introduced in the Lords on November 5 " to make permanent provision with respect to certain matters with respect to which temporary provision has hitherto been made by or under Defence Regulations . . ." etc. The Second Reading of this Bill was taken a fortnight later in conjunction with some of a series of Resolutions continuing the operation of the Supplies and Services (Transitional Powers) Act, 1945, and various Defence Regulations. Some of these Resolutions were not moved in the Lords on that day, as they were simultaneously being debated in the Commons, and amendments had been put down to them. If these amendments were carried in that House, there existed no machinery by which such amendments might be communicated to the Lords. This procedural obstacle illustrates the difficulty with which Parliament is faced in endeavouring to retain control over delegated legislation. The general tone of this debate was that although the mass of Defence Regulations and other general Regulations had been first introduced in war-time, they had been retained by the Labour

Government in furtherance of its own political ends. The Conservatives, in their election manifesto, had promised to sweep away most of these restrictions, and " set the people free ". In proposing, therefore, to continue many of these Regulations and to pass legislation making a few of them permanent, the Government appeared to be abandoning its principles. Besides this general point, the extreme complexity and unintelligibility of the Regulations were mentioned, and the suggestion was made by Lord Silkin that a select committee might be set up to look into the whole question of the parliamentary control of delegated legislation. It was further suggested (by Lord Stansgate) that inasmuch as the existing reports from the Special Orders Committee of the Lords and the Statutory Instruments Committee of the Commons were very largely formal documents, it might be well to set up a joint committee of both Houses to examine delegated legislation and report upon their merits, and not merely on their form. Lord Stansgate recognised, however, that it was not likely that the Commons would agree to such a joint committee. An anomaly was brought to the attention of the House by Lord Milner of Leeds, who moved an amendment to the Motion prolonging the life of the Defence Regulations, to the effect that no such Regulation should be revoked without an Address to Her Majesty from each House of Parliament. At present, he said, although the concurrence of both Houses was necessary before a Minister could put a new Regulation into force, yet that same Minister could revoke his regulation without the consent of Parliament. Lord Milner did not, however, press his amendment. The remaining two Motions prolonging the existence of Defence Regulations were moved on December 2. A number of amendments were moved by the Opposition, both to omit regulations from the Motion and to add others (which, by not being included in the Motion, were intended to expire). During the debate, Lord Jowitt remarked that the fate of 24 separate enactments, some of them fairly considerable, depended upon the present discussion. They were in effect having a Committee stage which concerned a vast number of separate and complicated subjects. This was not, he claimed, a reasonable way for Parliament to deal with this matter. In reference to the second of the two Motions under discussion, Lord Jowitt challenged anyone in the House, with the exception of the Lord Chancellor, to get up and say that he understood what the House was being asked to do. Lord Samuel strongly supported this point of view and again suggested that " an entire change in the procedure of both Houses of Parliament in dealing with the parliamentary control of delegated legislation " was needed. He again pressed for a joint committee, or a select committee of each House, to go thoroughly into the whole matter. The Commons had already announced the appointment of a select committee; he hoped that the Lords would join them, or set up a

similar committee. This hope was reiterated by the Lord Chancellor and by many other speakers.

After long debate, the Resolutions were carried without amendment. They had also been carried unamended in the Commons; and identical Addresses were, therefore, able to go from each House to the Queen.

On December 16, the House resolved itself into a committee on the Emergency Laws (Miscellaneous Provisions) Bill.[3] On this occasion the Opposition moved a number of new clauses designed to secure that various Defence Regulations, which had been kept in force by the Labour Government, should be made permanent. Had all these amendments been carried, there would have been inserted, after Clause 1 of the Bill, 5 new clauses in the following form:

> Regulation 58 AE (Training, etc., of persons employed in coal mines) (*or whatever the description of the Regulation might be*) of the Defence (General) Regulations, 1939, so far as it was in force on the 10th December, 1950, shall have permanent effect.

But, in fact, none of the amendments was carried, and the Bill, having been sent to the Commons early in 1953, received the Royal Assent in July of that year. During the debate on December 11 on the annual Expiring Laws Continuance Bill,[4] there was a further reference to the desirability of a joint committee on delegated legislation.

A different aspect of delegated legislation was raised on December 9, when the Police Pensions Regulations came before the House for an affirmative Resolution. The Special Orders Committee had reported as follows:

> The Committee invite the attention of the House to the drafting of these Regulations. The first paragraph of the Police Pensions Regulations, 1952, purports to amend paragraph (3) of Regulation 10 of the Police Pensions Regulations, 1949; but Regulation 10 contains no paragraph (3). We are informed that a paragraph (3) was added to Regulation 10 by paragraph 13 (3) of the Police Pensions Regulations, 1951. But there is no indication of this in these amending Regulations, nor any indication that, when referring to the 1949 Regulations, these amending Regulations are referring to the 1949 Regulations as amended by subsequent Regulations. Indeed the only indication we can find that the 1949 Regulations have been previously amended is the footnote to the heading of Part I which says ' S.I. 1949/1241; 1949 I. p. 3331; and see S.I. 1950/778; 1950 II, p. 338: S.I. 1951/2192: 1951 II, p. 208'. If the reader looks up the two last references in this footnote he will find the Police Pensions Regulations, 1950, and the Police Pensions Regulations, 1951; and after reading through the 1950 Regulations, and then the 1951 Regulations as far as paragraph 13, he will at last find the new paragraph (3) added to Regulation 10 which is amended by paragraph 1 of these new amending Regulations. The same process has to be followed on many other paragraphs; paragraphs 2, 3, 4, 10, 11, 12, 15, 16 and 17 all amend non-existent passages in the 1949 Regulations without any indication where they are to be found.
>
> The same difficulty occurs in the Police Pensions (Scotland) Regulations, 1952.

We think that Regulations should be made as clear as possible. We strongly recommend that the Police Pensions Regulations should be consolidated before any further amending Regulations are submitted to the House. In any case we recommend that, whenever any amending Regulation amends some passage that does not exist in the original Regulations, a footnote should state precisely where the passage can be found.

and there is little doubt that the House would not have given an affirmative Resolution to these Regulations had it not been for the statement, made on behalf of the Home Office, that several policemen and policewomen would have suffered if the Resolution had not been agreed to. During the debate, various peers again pressed for a select committee to devise a fresh course of procedure for ensuring a proper parliamentary control over delegated legislation, and eventually, on the understanding that the report from the Special Orders Committee would be the subject of a further special debate, the affirmative Resolution for the Police Pensions Regulations was agreed to.

On December 17[5] Lord Silkin rose to call attention to the report from the Special Orders Committee on these Regulations and to move for Papers. After a general review of the difficulties that confronted Parliament in dealing with delegated legislation, he suggested that the powers of the Special Orders Committee should be extended so that they might send back an unsatisfactory regulation to the department which had produced it. Lord Schuster, who had spent many years as Clerk of the Crown in Chancery and Permanent Secretary to the Lord Chancellor, emphatically repudiated the notion that it was necessary for documents of this sort to be in a legal language which was unintelligible, to the ordinary reader. " An ordinary intelligent reader ", he said, " on reading a regulation ought to be able to know what it is about ", otherwise the House should not pass the regulation. If regulations were refused by Parliament on this principle, they would find the drafting of them would much improve. The Lord Chancellor, replying to the debate, once more expressed the hope that there would be a joint committee to look into the whole question, and assured the House that the report of the Special Orders Committee had been very much taken to heart by the Government, and that indeed one or two regulations which were in draft had been altered and simplified in accordance with the Committee's recommendation. After further short debate, Lord Silkin's Motion was withdrawn.

At the time of going to press, no joint committee or select committee of the Lords, has been set up; but an interim Report from the House of Commons Select Committee on Delegated Legislation has been published.[6]

[1] 177 *Hans.*, c. 1168.
[2] *Ibid.*, c. 1242.
[3] 179 *Hans.*, c. 1007
[4] *Ibid.*, c. 981.
[5] *Ibid.*, c. 1057.
[6] H.C. 310 (1952-53).

VII. PARLIAMENTARY QUESTIONS ON THE NATIONALISED INDUSTRIES

BY THE EDITORS

1. Report of Select Committee

On December 4, 1951, a Select Committee was appointed " to consider the present methods by which the House of Commons is informed of the affairs of the Nationalised Industries and to report what changes, having regard to the provisions laid down by Parliament in the relevant statutes, may be desirable in these methods ".[1] The Committee sat 17 times between January 30 and October 29, 1952, and took evidence from the Clerk of the House, the Second Clerk Assistant, the Chairmen of the British Transport Commission, the British Electricity Authority and the National Coal Board, a former Director-General of H.M. Post Office, the Leader of the House and the holder of that office in the previous Ministry.

In their Report to the House, agreed upon on October 29, 1952,[2] the Committee concentrated upon Questions to Ministers, expressing a hope that a similar Committee might be appointed in the next Session to deal with the problems of public accountability and periodical review. They also recorded their decision to concentrate their inquiries almost entirely upon the 5 major industries recently nationalised, namely, Coal, Transport, Gas, Electricity, and Iron and Steel, since these had been constituted as independent public corporations, with the deliberate intention of freeing them as far as possible from the immediate control of the Government and Parliament, and it was in their case chiefly that it had been asserted that difficulties had arisen in obtaining information about their activities. Some inquiries about H.M. Post Office had been made rather to illustrate contrasting methods of control than to suggest changes in those methods.

The Committee stated that they had been informed by the Second Clerk Assistant that the Table Office were guided in their admission or refusal of Questions by the Rules given in Erskine May,[3] but that these Rules were not binding, being " an attempt to put down what the practice is ". The Rules required Questions to relate to the public affairs with which Ministers are officially concerned, to proceedings pending in Parliament, or to matters of administration for which Ministers are responsible; they also prevented anticipation of discussion upon an Order of the day, or the raising of matters under the control of local authorities, and generally regulated the language of Questions. The Committee commented on the operation of Rule 26,[4] which excludes Questions " repeating in substance questions already answered or to which an answer has been refused ". This form of words differs from that used in the XIIIth Edition of Erskine May, which reads " A question fully answered, whether

orally or in print, cannot be renewed ". The Committee's observations are here set out *in extenso*, together with the 3 following paragraphs (5-7) of the Report:

It will be observed that the essential difference between the two versions of the rule consists of the introduction of the words " in substance " which would normally be construed as merely forbidding the offering of the same Question in different terms, but which has been regarded in practice as extending the prohibition from particular questions, readily identifiable, to whole categories of questions, the limits of which are determined by the officials who deal with Questions subject in all cases to the ruling of Mr. Speaker. This is an important matter, because one of the chief difficulties of Members, as will be seen, is that certain classes of questions may not be asked about nationalised industries, and the limits of those classes are not easily fixed. The result of the present interpretation of the rules is that the refusal by a Minister to answer a single question enlarges those excluded categories, in some cases, quite extensively, and sometimes arbitrarily. The Second Clerk Assistant was asked when the words " in substance " were added, and whether that was in pursuance of a ruling by the Chair, and he replied:

> " I have no means of discovering that, because most of the work here is a matter of practice which is handed down, and records are not necessarily kept."

In reply to the question " Are the words ' in substance ' which are to be found here in the new edition your basis for refusing to accept whole categories of Questions after a Minister has refused to answer one question?" the witness replied:

> " It is difficult to reply to that with a direct answer. The reason is that May is not a kind of charter under which we work. May is an attempt at the moment to set down procedure as best the Clerk who is editing it can do. My grounds for considering that certain classes of Questions might be out of order was the practice when the practice was handed down to me from my seniors."

There can be no doubt that every possible effort is made by the officials to interpret the rules in the manner best calculated to admit a doubtful Question, but this can be done only within limitations not always clearly defined. The present practice despite the helpful interpretations of the officials, undoubtedly results in the rejection of Questions which many Members consider should be answered, but it must be conceded that there are advantages in the rejection of Questions where their admission would lead merely to repeated refusals.

5. Your Committee have considered the present method whereby the onus of determining in the first place whether a Question should be placed upon the Order Paper rests upon the Clerks at the Table. Your Committee gave consideration to the point as to whether Questions now liable to be excluded should appear on the Order Paper. This would make it extremely difficult for a Minister to exclude by one reply a whole category of Questions and it would be possible for Members to insist that the Questions would appear on the Order Paper. This would avoid some of the present difficulties but Your Committee feel that the introduction of such an arrangement would be open to serious objection, because Questions might relate to detailed administration. If a large number of such Questions appeared on the Order Paper, and the Minister on the floor of the House refused to answer them, this would surely increase the sense of frustration of the individual Member, and would provide no further information. If the new arrangement were ineffective

there would be no point in introducing it. If it were effective, in the sense that it provided information to Members which under present arrangements cannot be obtained, this could only mean that the pressure on the Minister would have been passed on to the Public Corporation, and to meet it they would have to take all the steps which would be necessary if the Minister were answerable for such Questions. The worst possible situation would be created if the publicity resulting from the appearance of such Questions on the Order Paper had the effect of putting a check on initiative without adding any information.

6. In general, Questions must be confined to matters for which the appropriate Minister is responsible. In the case of the Nationalised Industries, a large amount of responsibility has been vested by statute in the Board. The list of duties for which the Minister is still responsible, and on which he may therefore by the practice of the House be questioned, is usually set out in a definite Section in each statute. The duties vary slightly from one industry to another, but very roughly may be classified as:

(*a*) giving to the Board directions of a general character as to the exercise and performance by the Board of their functions in relation to matters appearing to the Minister to affect the national interest;
(*b*) procuring information on any point from the Board;
(*c*) a number of specific duties in connection with the appointments, salaries and conditions of service of members of Boards; programmes of research and development, and of education and training; borrowing by Boards; forms of accounts and audits; annual reports; pensions schemes and compensation for displacement; and the appointment of Consumer's Councils, their organisation and operation.

7. Opportunities for asking Questions under heading (*a*) above are limited by the words of the statute. Directions must be " of a general character ", and must be " required by the national interest ". This has been interpreted as implying a major matter of policy, or action required by crisis conditions, as contrasted with day to day working. But it will be obvious that there is a wide range of possible divergence of opinion as to the application of both these criteria to individual cases. Where neither criterion is held to apply, the proposed Question would fail as coming under the general rule of Questions (Rule 22 of *May*, p. 345) which prohibits raising matters under the control of bodies or persons not responsible to the Government and matters in which the Government have no power to intervene. Where Members press Questions which have been ruled by the Table not to come under this heading, the Question must be submitted to Mr. Speaker for his decision.

Referring to Questions coming under the heading (*b*) in paragraph 6, the Committee then quoted the statement made on December 4, 1947, by Mr. Herbert Morrison, at that time the Leader of the House,[5] in which he affirmed that a large degree of independence for the boards in matters of current administration was vital to their commercial efficiency, and that the responsibility of a Minister was limited to the directions he gave in the national interest and the action which he took on proposals which a board was required by Statute to lay before him. It would be contrary to that principle and the expressed intention of Parliament if Ministers were to give information in replies about day-to-day matters. In answering a supplementary Question on Mr. Morrison's statement Mr. Speaker Clifton Brown had made it clear that a

refusal by a Minister to answer a Question would by normal practice prevent such a Question being put on the Paper a second time. He had ruled some months later, however, that he would be prepared to direct the acceptance of a Question which, in substance, had been previously refused, provided that in his opinion the matter was of sufficient importance to justify this concession.[6]

The Committee's Report continued:

9. It is in respect of the limitation expressed in Mr. Herbert Morrison's statement that the importance of Rule 26 in May, mentioned in paragraph 3 above, becomes particularly apparent. The present practice of the House is that when a Question has been refused no similar Question is accepted by the Clerks at the Table or the Table Office. The result, in the case of Questions bearing upon Nationalised Industries, has been that when an answer has been refused by a Minister, the Clerks at the Table and the Table Office have been obliged to close to Questions a section of the affairs of the Nationalised Industry, and no Question coming within its limits can be printed on the Order Paper. Thus, for instance, Mr. Gordon, the Second Clerk Assistant, in evidence before Your Committee gave the example of Questions on the subject of dirty coal. He said " The previous Minister of Fuel and Power answered on the subject of dirty coal on which there was a large number of complaints. We now have many fewer complaints about that, and the last answer we had to a similar Question which we put down, because the previous Minister regularly answered such Questions, was that the new Minister replied: ' This is a matter for the Coal Board '. Consequently, that shuts out, as far as we are concerned, the subject of dirty coal. If it is a matter for the Coal Board we can no longer put those Questions down because the Minister is no longer willing to answer them. That is a Question of a type now fully answered for this Session."

The Minister can always indicate to the Table that he is willing to answer a class of Questions which are temporarily the subject of particular public interest. On the other hand, the rule by which the Table refuses Questions which a Minister has stated that he will not answer applies only for each Session. It is open to Members to put the same questions down at the beginning of the subsequent Session.

10. Your Committee have considered whether the matters mentioned by Mr. Herbert Morrison should in future retain their immunity to parliamentary questioning. This immunity is principally the result of two factors, (i) the establishment by statute of the public corporations as separate legal entities having full responsibility for day-to-day administration, and (ii) the policy of Government referred to in paragraph 8 hereof. [*Mr. Morrison's statement.*] Because of the first factor, Ministerial responsibility in that field is clearly excluded. It follows that any attempt to remove the immunity must lead to an alteration of the terms of the Statutes under which the public corporations are constituted. Your Committee are not empowered to recommend amending legislation. The arguments in favour of the retention of the immunity on the basis of the first factor appear to the Committee to be conclusive. It would be possible within the terms of the existing Acts for the Minister to obtain information on any point from the Board but this power should not be used so as to make it difficult for the public corporations in their present form to carry out their statutory responsibilities.

The Committee then described the evidence given by the Chairmen of 3 of the Nationalised Industries (Transport, Electricity and Coal), who had all felt that parliamentary Questions would involve an increase of staff and would also be inconsistent with managerial

efficiency, since they would cause executives in the industries to be constantly "looking over their shoulders"; they would also lead to Ministerial interference in the affairs of the Corporations. A former Director-General of the Post Office informed the Committee that while parliamentary Questions had not materially increased the difficulties of his own work, he thought that for Civil Servants working under modern conditions they might cause more difficulties, and that for great Nationalised Industries they were perhaps unsuitable.

The final recommendations of the Committee were as follows:

17. The basic feature of the Parliamentary Question is that it is answered by the Minister ultimately responsible for the decisions about which he is questioned. Under their existing constitution, the Nationalised Industries are not subject to any direct control by Ministers in individual matters of detail. Your Committee therefore feel that without altering the terms of the statutes under which the public corporations are constituted, which they are not empowered to recommend, Questions on matters of detail in the Nationalised Industries are inappropriate.

18. On the other hand, Your Committee are convinced that the present method of placing the onus of determining in the first place whether a Question which is not obviously ruled out under paragraph 17 above should be placed upon the Order Paper should not rest upon the Clerks at the Table. Where the identical Question, or the same Question in slightly different terms, has been previously asked, the Clerks at the Table are clearly obliged to refuse it. But in the case of questions which are not obviously matters of repetition or matters of detailed administration the questions should be allowed to appear on the Order Paper and the Minister would have to answer or refuse to answer on the floor of the House.

19. The nationalisation of so many important concerns has inevitably caused an increase in the total number of Parliamentary Questions which Members wish to set down for oral reply. The time now available for Questions is not always adequate for the Questions which Members wish to ask. They therefore recommend that the House should consider whether the number of Questions which Members are permitted to set down for oral reply should be reduced from three to two on each day on which Questions may be asked.

The Minutes of the Proceedings of the Committee show that 2 alternative draft Reports were submitted to the Committee, the first (which was adopted) by Mr. Assheton (Blackburn, W.) the Chairman, and the second by Mr. Ronald Williams (Wigan). Large portions of the 2 drafts are identical, and 2 of the main recommendations of the Chairman's draft (see paragraphs 9 and 19 quoted above) are more or less faithfully reflected in Mr. Williams' draft. The latter, however, besides quoting much more freely from the evidence, asserts more categorically the objections (adumbrated in paragraph 5 quoted above) to the inclusion on the Order Paper of Questions now excluded, on the explicit grounds that scope for further Questions does not exist within existing legislation. It is presumably for this reason that paragraph 18 of the Report is absent from Mr. Williams' draft. A curious feature of the alternative draft is the indication, in several places, of differing opinions by

different members of the Committee, a form of proceeding contrary to an opinion which was expressed in 1930-31 by Mr. Speaker[7] and has been scrupulously observed ever since. The Chairman's draft was adopted by the Committee without a division as the basis of their Report.

2. Debate on a Private Member's Motion

At about an hour before the interruption of Business on Friday, December 5, a day on which Private Members' Motions had precedence, Sir Edward Boyle (Birmingham, Handsworth) moved the following Motion:

> That this House, whilst recognising that the public corporations which control the Nationalised Industries should enjoy that large degree of independence in matters of current administration which is vital to their efficiency as commercial undertakings; none the less urges that honourable Members should not be precluded from placing Questions on the Order Paper relating to the nationalised industries, provided that both the subject matter of any such Question is not confined to administrative detail, and the same Question has not previously been asked.[8]

He began by calling attention to the Report which had been recently made by the Select Committee on Nationalised Industries and expressed the indebtedness of the House to the Members of the Committee, and in particular to the Chairman and Mr. Williams. He said that he intended to confine his speech to one issue, namely, the present practice whereby, when a Minister had refused to answer a Question bearing on a Nationalised Industry, no further Question on the same subject could normally be accepted by the Table during that Session (see paragraph 9 of Report quoted above).

He observed that the restriction imposed by Rule 26 of Erskine May dated from the time of Mr. Speaker Fitzroy, at which period there were no nationalised industries at all. As the Second Clerk Assistant had made clear in his evidence before the Committee, Erskine May was an honest attempt at putting down what was the practice of the House, but could not be treated as a sort of omniscient umpire. He suggested that in a future edition Rule 26 might possibly be amplified and made a little clearer to show what was implied.

Turning to Mr. Morrison's statement of December 4, 1947, to which the Committee had referred in their Report, he said that the decision to answer Questions asking for information on day-to-day matters did not arise out of the Nationalisation Acts themselves. He felt, however, that Lord Hurcomb had been quite correct in saying, in evidence before the Committee, that if the decision were ever reversed, it would involve a large increase in staff. Mr. Morrison had confined himself to stating what Questions the Government would not answer; Mr. Speaker Clifton Brown had subse-

quently ruled that certain Questions could not even be admitted to the Order Paper. These included Questions (*a*) for which the Minister had no responsibility, a fact that could only be determined by reference to the Minister himself, and (*b*) which the Minister had already refused to answer.

This was the present practice of the House, and it was causing anxiety to some hon. Members. In the first place, there were very few occasions for the discussion of nationalised industries, and the exclusion of Questions regarding them from the Order Paper was a serious matter. Secondly, he thought that Mr. Speaker Clifton Brown's two Rulings pulled in slightly different ways, since the first suggested that the Minister was the sole person who could decide whether a Question was in order or not, but the second laid the power of decision in some circumstances firmly on the Table.

While not disputing that matters of day-to-day administration should be excluded, he thought it quite clear that a number of individual cases would add up to a rather more important question of administration, *e.g.*, if a particular train was an hour late on every day for a month. In such cases it would be in the interest both of Members and of the boards themselves that Ministers should have every chance of making a statement. Mr. Speaker Clifton Brown had himself stated his readiness to relax the rule of non-acceptance "if the matters are of sufficient importance to justify the concession". Sir Edward Boyle felt that in considering whether to make this concession, the Speaker might direct his mind not only to the intrinsic importance of the subject-matter, but also to the number of hon. Members interested. Answering an interjection to the effect that such interest could be organised, he said that he was quite sure that the Chair could detect any spurious agitation. He also stressed the importance of the recommendation in the last sentence of paragraph 18 of the Report.

In conclusion, he recalled that procedure did not exist for the benefit of hon. Members, but in order to assist the House in one of its oldest and most cherished duties, the redress of grievances.[9]

After the Motion had been briefly seconded by Mr. Renton (Huntingdon),[10] Mr. Ronald Williams rose to express his congratulations to the mover of the Motion, and his appreciation of the way in which the Clerks-at-the-Table exercised their difficult function. Regarding the exclusion from the Order Paper of Questions relating to detailed administration, he thought that the conferring of responsibility on individuals by Parliament made it important that those undertaking the responsibility should work without undue interference. The exercise of initiative carried with it the right to make mistakes within certain limits.

He affirmed that the object of the proposal to reduce the maximum daily number of Questions from 3 to 2 was not intended to reduce the right of Members to ask Questions. It was only because most

Members exercised a self-denying ordinance that an absurd situation had not already arisen on the Order Paper.[11]

Mr. Assheton then spoke, briefly recapitulating the recommendations of the Committee, and asked whether the Government would give the House any indication as to whether or not they would accept them.[12]

Mr. Philip Noel-Baker (Derby, South), who had also been a member of the Select Committee, said that he had spent 5 of the last 11 years in answering Questions on Government-controlled industries, first as Minister of Transport from 1941 to 1945, and more recently as Minister of Fuel and Power. During that time he had reached 3 conclusions. In the first place, a Parliamentary Question was a very powerful instrument of public control. Secondly, when a Minister was in doubt whether to answer or not, it was always right for him to do so. Thirdly, the Questions he himself had answered had not hampered administration or cramped the initiative of management.

He endorsed the Committee's view that Questions on matters of detail in the nationalised industries were inappropriate. He felt sure that provided no rigid Rules were made Mr. Speaker would adopt Sir Edward Boyle's suggestion that he should take into account the number of Members who were concerned in a given matter. He himself had answered many Questions about dirty coal; action had been taken to improve the condition of the coal, Questions had become fewer, and his successor was not at present answering them, but should a great flood of Questions arise in the future, he would doubtless wish to answer them and Mr. Speaker would allow him to do so.

The proposed reduction of Questions from 3 to 2 would not increase the number of Questions answered, but would ensure a more rapid rotation of Ministers at the box.

In conclusion he said that the present system of Questions about nationalised industries had worked well, and he was glad that the Select Committee had recommended that it should go on.[13]

After a short intervention by Sir Herbert Williams (Croydon, East),[14] also a member of the Select Committee, Mr. Geoffrey Lloyd (King's Norton), the Minister of Fuel and Power, rose to reply to the debate. He observed that it was now generally accepted that once the decision had been taken and they were united about particular industries remaining nationalised, everybody wanted to see those industries thoroughly successful. They were all agreed that it would be unwise for the Minister to answer in detail on matters of day-to-day administration. Many difficulties arose in the process of obtaining information from outside a Government Department, and the men within the industries who had to supply the information were not used to working like civil servants in the knowledge that every action they took might be questioned by the House.

He pointed out that he had answered a Question on dirty coal the previous day; this, however, unlike a Question on the subject asked last Session, had dealt with his own responsibilities and not those of the board. This illustrated how narrow these matters could be.

The Government had not yet been able to consider the Report, and it was his duty to listen to the views expressed and to make a Report on the matter to his colleagues.[15]

The Motion was, by leave, withdrawn.[16]

[1] 494 *Hans.*, cc. 2355-6. [2] H.C., 332, (1951-52). [3] XVth Edition, pp. 343-5.
[4] *Ibid.*, p. 345. [5] 445 *Hans.*, c. 566. [6] 451 *Hans.*, c. 1636. [7] May, p. 617.
[8] 508 *Hans.*, c. 1989. [9] *Ibid.*, cc. 1989-99. [10] *Ibid.*, c. 1999.
[11] *Ibid.*, cc. 1999-2001. [12] *Ibid.*, cc. 2002-3. [13] *Ibid.*, cc. 2003-6.
[14] *Ibid.*, c. 2006. [15] *Ibid.*, cc. 2006-9. [16] *Ibid.*, c. 2009.

VIII. ALLOCATION OF TIME ORDER (NATIONAL HEALTH SERVICE BILL)

BY THE EDITORS

An article ("Guillotine and Business Committees") in Volume XVIII[1] of the JOURNAL, described in some detail the operation of S.O. No. 41 (Business Committee) as it was applied to the progress of the Iron and Steel Bill of Session 1948-49. No occasion to apply the S.O. arose in Sessions 1950 or 1950-51, but in Session 1951-52 allocation of time Orders were made in respect of 2 Bills, one of which, the National Health Service Bill, was committed to a Committee of the whole House. In spite of this, no use was made of S.O. No. 41, a matter which did not pass without comment.

The text of the S.O. No. 41 was set out *in extenso* in the above-mentioned article; no amendments have subsequently been made.

Initial Proceedings.—The Bill was presented on February 1, 1952,[2] its long title being:

to make further provision with respect to the making and recovering of charges in respect of services provided under the National Health Service Act, 1946, and the National Health Service (Scotland) Act, 1947; and for purposes connected therewith.

Debate on the Second Reading took place on March 27.[3] An amendment to defer the Second Reading for 6 months was negatived on a division, and the Opposition then divided unsuccessfully against a Government Motion to commit the Bill to Committee of the whole House. The Bill was accordingly considered in Committee of the whole House on April 3,[4] April 8[5] and April 9,[6] by the end of which day the consideration of Clause 1 had not yet been completed.

Allocation of Time Order.—On April 10, the House adjourned for Easter, and on its return Captain Crookshank (Gainsborough), the Minister of Health, announced that an allocation of time Motion would be moved on April 23.[7] This Motion duly appeared on the Order Paper in the following terms:[8]

That in the case of the National Health Service Bill the following provisions shall apply to the remaining Proceedings in Committee and to the Proceedings on Consideration and Third Reading:

1. COMMITTEE

The remaining Proceedings in Committee shall be completed in one allotted day, and shall be brought to a conclusion at the times shown in the following Table:—

Proceedings	*Time for Conclusion of Proceedings*
	p.m.
Clause 1	5.0
Clause 2	8.0
Clauses 3 to 8, new Clauses, new Schedules and any other Proceedings necessary to bring the Proceedings in Committee to a conclusion	10.0

2. CONSIDERATION AND THIRD READING

The Proceedings on Consideration and Third Reading shall be completed in a second allotted day, and shall be brought to a conclusion at half-past Nine o'clock on that day.

3. GENERAL

(*a*) After the day on which this Order is made, any day (other than a Friday) on which the Bill shall be the first Government Order of the day shall be considered an allotted day for the purposes of this Order.

(*b*) Any Private Business which has been set down for consideration at Seven o'clock, and any Motion for the Adjournment of the House under Standing Order No. 9 (Adjournment on definite matter of urgent public importance) on an allotted day shall on that day, instead of being considered as provided by the Standing Orders, be considered at the conclusion of the Proceedings on the Bill or under this Order for that day, and any Private Business or Motion for the Adjournment of the House so considered may be proceeded with, though opposed, notwithstanding any Standing Order relating to the Sittings of the House.

(*c*) In this Order any reference to the Proceedings on Consideration or Third Reading of the Bill shall include any Proceedings at that stage for, on or in consequence of re-committal; and in any Committee on the Bill, including a Committee to which the Bill has been re-committed (whether as a whole or otherwise), the Question that the Chairman do report the Bill to the House shall not be put, but the Chairman shall so report the Bill on the completion of the other Proceedings in the Committee.

(*d*) On an allotted day no dilatory Motion with respect to Proceedings on the Bill or under this Order, nor Motion to postpone a Clause or Schedule (including a new Clause or new Schedule), nor Motion to re-commit the Bill either as a whole or otherwise shall be made unless made by a Minister of the Crown, and the Question on any such Motion, if made by a Minister of the Crown, shall be put forthwith without any debate.

(*e*) For the purposes of bringing to a conclusion any Proceedings which are to be brought to a conclusion at a time appointed by this Order, and which

have not previously been brought to a conclusion, the Chairman or Mr. Speaker shall, at the time so appointed, put forthwith any Question already proposed from the Chair and any Question necessary to dispose of an Amendment already proposed, and in the case of a new Clause which has been read a second time also the Question that the Clause be added to the Bill and subject thereto shall proceed to put forthwith the Question on any Amendments, new Clauses or new Schedules moved by a Minister of the Crown of which notice has been given (but no other Amendments, new Clauses or new Schedules), and any Question necessary for the disposal of the business to be concluded, and, in the case of Amendments, new Clauses or new Schedules moved by a Minister of the Crown, he shall put only the Question that the Amendment be made or that the Clause or Schedule be added to the Bill as the case may be.

(*f*) On an allotted day the Proceedings to be brought to a conclusion under this Order shall not be interrupted under the provisions of any Standing Order relating to the Sittings of the House.

(*g*) Nothing in this Order shall:—

(i) prevent any proceedings to which this Order applies from being taken or completed earlier than is required by this Order; or

(ii) prevent any business from being proceeded with on any day, in accordance with the Standing Orders, if the Proceedings which under this Order are to be completed on that day have already been completed.

(*h*) Standing Order No. 41 (Business Committee) shall not apply in relation to this Order.

Before the Motion was moved, however, a number of points of order were raised.

Mr. Herbert Morrison (Lewisham, S.) submitted that the wording of S.O. No. 41 made the setting up of a Business Committee obligatory whenever an allocation of time order was made, and pointed out that Mr. Speaker, 2 days previously, had said:

> Clearly, the Standing Order would operate unless there was a specific Motion before the House to waive it for that occasion.[9]

He considered that paragraph (*h*) was not a specific Motion to suspend the Standing Order, which should be done by a separate and particular Motion. He also quoted the following passage from Erskine May on the division of Questions:

> As late as 1883 it was generally held that an individual Member had no right to insist upon the division of a complicated question. In 1888, however, the Speaker ruled that two propositions which were then before the House in one motion could be taken separately if any Member objected to their being taken together. Although this ruling does not appear to have been based on any previous decision, it has since remained unchallenged.[10]

From this he concluded that the 2 Questions (*i.e.*, the allocation of time and the suspension of S.O. No. 41) should be put separately.[11]

Mr. Bing (Hornchurch), while agreeing that it was not unusual for Guillotine Motions to contain references to the suspension of Standing Orders, contended that these references had always been conditional upon and incidental to the main substance of the Motion. In the present instance, however, the whole purpose of the Motion

was to substitute something else for the Standing Order; the latter should therefore be suspended first. Regarding the suggested division of the Motion, he referred to a Ruling by Mr. Speaker in 1902 that 2 parts of a proposed Standing Order should be divided. Calling attention to the frequency with which closure had been claimed in the present Session, he adduced as a further reason for dividing the Motion the possibility of closure upon the main question being accepted immediately after the closure on an amendment.[12]

Mr. John Wheatley (Edinburgh, E.) repeated the previous arguments regarding the suspension of S.O. No. 41. With regard to the Motion itself, he suggested that paragraph (*f*) as it stood would make it impossible for Mr. Speaker to exercise his power under S.O. No. 24 of adjourning the House or suspending the sitting in the case of grave disorder arising in the House. He also considered that paragraph (*g*) (ii) contained a provision which ought to be voted on separately. Mr. Speaker pointed out that there was an amendment on the Paper to omit that paragraph;* Mr. Wheatley submitted, however, that were the amendment disagreed to, Members who were otherwise in favour of the Motion might find themselves in a difficulty in voting on the Main Question. He concluded by suggesting that the Government should withdraw the Motion and put it down again in proper form.[13]

Mr. Speaker then delivered the following Ruling:

There has been some misunderstanding about the nature and scale of Standing Order No. 41. I will, if I may, try to elucidate it for the House.

This Order was passed, I think, in 1947, and it lays down a procedure whic' comes into operation as stated in paragraph (1) of the Order:

> " . . . in the case of any Bill in respect of which an order has been mad by the House, allotting a specified number of days or portions of days to the consideration of the Bill in Committee of the whole House or on report . . ."

In that case, the Order lays down that the work of splitting up the other hours into compartments should be done by this business committee which, according to paragraph (3) of the same Standing Order, has to report back to the House, and it is ultimately the House which decides the hourly compartments of the discussion. So it is not true to think that Standing Order No. 41 affects every allocation of time order; it does not. It only affects one class of order, namely, orders allotting a specified number of days or portions of days to the consideration of the Bill.

In that case, the business committee laid down by Standing Order No. 41 must be used to conduct the further sub-divisions, if the House follows me, in the matter.

The Motion now before us, and which I had not the advantage of seeing the other day when I was asked about it, follows the pattern of what has been called " Guillotine Resolutions ", which have been considered by the House for more than 50 years.

It not merely lays down that the Committee stage shall be completed in one day or in a number of days, but it also fixes the various times by which various items of the Bill shall be completed. That is to say, the Motion itself

* This amendment, though on the paper, was not moved.

says what it is proposed the House should agree to not only as to the number of days to be allocated, but as to the compartments.

It is, therefore, obvious that there is no necessity for any mention of Standing Order No. 41 in the Motion. The words have been put in. There are many Standing Orders which are affected and not mentioned. Standing Order No. 1 is intimately affected by this Motion we are to discuss. Standing Order No. 7, which regulates the time for Private Business, is affected but not mentioned, and Standing Order No. 9, in the same way, is also affected; so I take the view that the mention of Standing Order No. 41 in paragraph (*h*) of Part 3 is only put in, as the lawyers say, *ex abundante cautela*, and only put in through an excess of care. That being the position, it is not necessary to move to suspend this order which does not affect this particular type of Guillotine Motion, and, therefore, there is no point of order or separate question involved.

May I say a word on the other questions which have been put with great eloquence and learning by the hon. and learned Member for Hornchurch (Mr. Bing), that there are cases where it is proper to sub-divide the Motion? The House was told by the right hon. Member for Lewisham, South (Mr. H. Morrison), that when a Motion was put in as one matter it might embarrass hon. Members who might want to vote on one part of it and others on another part. In this sort of Motion all this embarrassment could be avoided by the putting down and discussion of Amendments, and there have been a large number of Amendments put to this Motion which, I hope, at some time, we shall proceed to discuss.

Therefore, my Ruling on the point of order he made is that it is not necessary to make any formal suspension Motion for Standing Order No. 41. That is not necessary. Neither is it necessary to split up this Motion into separate Questions. The way of dealing with that is, as I say, by Amendment. The right hon. Gentleman was only able to give me short notice of the precedents he has quoted, but I have looked them up, and I find them different in my judgment on essentials from the situation with which we are confronted today. I need not go further into that. He referred in the course of his speech to an occasion when Mr. Speaker had to suspend a Sitting, and I hope that he will not take that as a precedent for the conduct of our proceedings tonight. I would consider, in answer to the right hon. and learned Member for Edinburgh, East (Mr. Wheatley), that my powers in that respect are not impaired in the slightest by this Motion.[14]

When Mr. Speaker had given his Ruling, Mr. Morrison,[15] Mr. Bevan (Ebbw Vale)[16] and Mr. Paget (Northampton)[17] then asked him to reconsider his Ruling, particularly as it affected the suspension of S.O. No. 41. Mr. Speaker replied:

I really cannot allow this argument to go on too long. I have listened to everything that has been said and the answer to the hon. and learned Gentleman for Northampton (Mr. Paget) is that there is nothing in the Standing Orders or the practice of the House which compels a Government to frame a resolution for the allocation of time to which Standing Order No. 41 must apply. Two courses are open to them. Either they can invoke Standing Order No. 41 by proposing to allocate certain days for the discussion of the Committee stage, or they can take out of the hands of the Committee, as they have done here, the further sub-division of the time.

If they do that, there is no power left in Standing Order No. 41 and I would point out, with all respect, that although we have all been talking about the suspension of Standing Order No. 41 paragraph (*h*) actually says:

> " Standing Order No. 41 (Business Committee) shall not apply in relation to this Order ".

It does not say it should be suspended; in my judgment it is merely declaratory of the fact that as the work of Standing Order No. 41 is being done in the Motion, it does not apply. I think the matter is crystal clear and I think I should be failing in my duty if I allowed too much discussion on the matter. I hope the House will take my view of the matter. I have given it great thought.[18]

The debate on the Motion lasted for twelve and a half hours, at the end of which it was *agreed to* on a division (Ayes 270, Noes 245). Although at times the atmosphere in the House became greatly heated, the contingency envisaged by Mr. Wheatley did not materialise, and there was no invocation of S.O. No. 24. As is not unusual in a debate of this character, the Chair on several occasions found it necessary to rule that discussion of the merits of the Bill was not in order.[19] It is not proposed to describe here in detail the course of the debate, but simply to set out the amendments moved to the Motion, and their disposal.

Mr. McNeil (Greenock) moved to leave out "one" in the first sentence of paragraph 1 and insert "three".[20] Closure was claimed, and the amendment was *negatived* by 287 votes to 267.[21]

Mr. Blenkinsop (Newcastle on Tyne) moved to leave out the Table in paragraph 1, and insert the following new Table:

Proceedings	*Time for Concluding Proceedings*
All Amendments up to and including those to line 12 of Clause 1	5.0 p.m.
All remaining Amendments to Clause 1	5.30 p.m.
Clause 1 to stand part of the Bill	6.0 p.m.
All Amendments up to and including those to line 9 of Clause 2	6.30 p.m.
Any Amendments to line 10 of Clause 2	8.30 p.m.
All remaining Amendments to Clause 2	9.30 p.m.
Clause 2 to stand part of the Bill	10.30 p.m.
Clause 3	11.30 p.m.
Clause 4	12.30 a.m.
Clause 5	1.0 a.m.
Clause 6	2.0 a.m.
Clauses 7 and 8	2.30 a.m.
New Clauses, new Schedules and other Proceedings necessary to bring the Proceedings on Committee to a conclusion	

Standing Order No. 1 (Sittings of the House) shall in relation to these provisions apply as if for the words "10 p.m." there were substituted the words "2.30 a.m."

The amendment was *negatived* by 275 votes to 254, again on a closure.[22]

Mr. Marquand (Middlesbrough, E.) then moved to leave out paragraph 2 and insert:

(*a*) Two allotted days shall be given to the Report Stage and one allotted day shall be given to Third Reading.

(*b*) The Proceedings thereon shall, if not previously brought to a conclusion, be brought to a conclusion at Ten o'clock on the last day allotted in the case of the Report Stage, and on the day allotted in the case of the Third Reading, and the general provisions set out in paragraph 3 of this Order shall apply.[23]

The amendment was *negatived* by 277 votes to 250, again on a closure.[24]

Mr. Bing then moved to insert the following words at the end of paragraph 3(*a*):

(*b*) On any allotted day upon which Consideration of the Bill is not entered upon by half-past Three o'clock, there shall be added to any times specified in this Order a time equivalent to the time which elapsed between half-past Three o'clock and the time at which Consideration of the Bill was entered upon.[25]

The Leader of the House said that he was prepared to accept the amendment, provided that the word " Consideration " was written with a small " c "; a capital " C " restricted its meaning to the Report Stage and excluded the Committee Stage, which would be undesirable. With the assent of the mover, the amendment, with this small alteration, was *agreed to*.[26]

Mr. Leslie Hale (Oldham, W.) moved to leave out paragraph 3(*b*).[27]

The amendment was negatived without a division.[28]

First Allotted Day: Mr. Speaker's Rulings.—Before the moving of the last amendment, Mr. Herbert Morrison moved " That the debate be now adjourned ",[29] in order to raise an interesting point of order. The Government had previously announced their intention of taking the first allotted day on the Bill at the sitting on April 24; the time being now 4.15 a.m., that calendar day (although not that sitting day) was already entered upon. Mr. Morrison argued that the terms of paragraph 3(*a*) of the Motion made it impossible for the first allotted day to take place on that calendar day; he cited a Ruling given by Mr. Speaker on March 26, when, in reply to an observation by Mr. Sydney Silverman (Nelson and Colne) that " since the House has been sitting all through the night . . . ' This day ' is still Wednesday, because Wednesday's Business has not yet been finished ", Mr. Speaker said: " ' This day ' means this calendar day—Thursday ".[30]

Mr. Wedgwood Benn (Bristol, S.E.), seconding the Motion, quoted the Guillotine Motion which had been moved on the Established Church (Wales) Bill, 1912, in which the following words occurred: " After this Order comes into operation any day after the day on which this Order is passed shall be considered an allotted day ".[31] The Order was agreed to in the early hours of Friday, November 29, and although at the following (Friday) sitting the Committee stage of the Bill was taken as the first Order of the day, that sitting was not counted as an allotted day.[32]

Mr. Eric Fletcher (Islington, E.) then adduced the further instance

of the Military Training Bill of 1939, when the Government had guarded against the present contingency by wording their Motion as follows: " Any day, including the day on which the Order is passed, on which the Military Training Bill is put down as the first Order of the day. . . ."[33]

Mr. Speaker declined to accept Mr. Morrison's Motion, and delivered the following Ruling:

To clear out of the way the citation which the right hon. Gentleman made of an answer which I gave to the hon. Member for Nelson and Colne (Mr. S. Silverman), on 26th March, I must say that I was a little alarmed when I heard it, but the right hon. Gentleman was kind enough to let me have his copy of HANSARD. I was relieved to find that it contained nothing inconsistent with what I am about to say. There was some dispute on that occasion as to whether the Government had postponed the Army and Air Force (Annual) Bill. As is customary, when I ask, " What day?" the Government spokesman replied " This day "; and that meant the day we were then in.

But I have to consider now what day this is, in fact, and the Ruling I give is based on the fact that we are sitting at this hour because, yesterday, as a calendar day, the House passed the extension of the Sitting. The resolution passed on Wednesday was that the proceedings on Government business with which we are now concerned should be exempted, at this day's Sitting, from the Standing Order on Sittings of the House. If " this day " means Wednesday, that would mean that we should have ceased sitting at midnight and should have no business to be sitting here now.

But the fact that we are sitting here still, means that the proper interpretation of " this day " is such that we are still in Wednesday's Sitting—[*Interruption*]. Yes, otherwise, if this is not Wednesday's Sitting, the Standing Order passed on Wednesday afternoon must have ceased to have effect at midnight. Therefore, I have to rule, while undertaking to consider the authorities quoted when time is available, that if the Government concludes this Order now, the House will be in order in making " tomorrow " or Thursday the start. But this is a matter for the Government; if the Government have made a mistake, that is their affair. For the purpose of the Adjournment Motion, I rule that the first allotted day could be Thursday, and, that ground having failed, the Motion for the Adjournment is one which I cannot accept.[34]

Subsequent History of the Bill.—The first allotted day, which concluded the Committee stage of the Bill, was taken on April 24.[35] Before the Business was entered upon, Mr. Speaker reminded the House of the Ruling (quoted above) which he had given towards the conclusion of the previous sitting, and amplified it thus:

The difficulty arises from the distinction between a calendar day and a Parliamentary day, in that in our practice the word " day " means a Parliamentary day or Sitting, unless clearly otherwise defined. For example, when in 1936 the House met on Wednesday, 22nd July, and rose after 1.0 a.m. on Friday, 24th July, that counted as one Sitting or one Parliamentary day, and the phrase " this day ", which was used in deferring many of the Orders of the Day of 22nd July, came eventually to mean Friday, 24th July. It is only when the House goes on sitting beyond the hour of 2.30 that the words " any day after the day on which this Order is made " mean a day two or more calendar days later than the day on which the House began to consider the Order.

Therefore, in this instance, the Sitting or Parliamentary day which began

at 2.30 today represents a day later than the day on which this Order was made, which was the day or Sitting that began yesterday.

In 1912 the Guillotine Resolution for the Welsh Church Bill was passed at 5.0 a.m. at a Sitting which began on 28th November. On Friday, 29th November, the Bill was not the first Order of the Day, and that Friday was not the first allotted day (as the Journal shows), although the Bill was in fact taken during that Friday. This was a point put by the hon. Member for Bristol, South-East (Mr. Benn). The Bill was put down as the first Order on Thursday, 5th December, which was therefore, quite consistent with the present practice. The hon. Member for Islington, East (Mr. E. Fletcher), quoted the Military Service Act, 1939, when a different form of words was used in the Guillotine Motion, but that was because it was wished to start an allotted day immediately after the Guillotine Resolution was passed.

It follows from these circumstances that the House can now properly proceed to consider the National Health Service Bill in Committee on the first allotted day.[36]

Since the debate on the Bill did not begin until 4.06 p.m., the guillotine fell at 5.36 p.m., 8.36 p.m. and 10.36 p.m. instead of the times stated in paragraph 1 of the Motion, in accordance with Mr. Bing's amendment to paragraph 3 (*a*).

The Report and Third Reading of the Bill were taken upon May 1.[37] Consideration of the Bill having been entered upon at 3.51 p.m., the guillotine fell at 9.51 p.m. The Bill was passed by 284 votes to 266.

The Bill was then sent to the Lords, where it was agreed to without amendment. It received the Royal Assent, and became 15 and 16 Geo. VI and 1 Eliz. II, c. 25.

[1] Pp. 141-9. [2] 495 *Hans.*, c. 507. [3] 498 *Hans.*, cc. 841-95, 961-1030.
[4] *Ibid.*, cc. 1938-2042. [5] *Ibid.*, cc. 2503-2704. [6] *Ibid.*, cc. 2824-2942.
[7] 499 *Hans.*, c. 45. [8] *Ibid.*, cc. 439-40. [9] *Ibid.*, c. 47.
[10] May, XVth Edition, p. 391. [11] 499 *Hans.*, cc. 419-20. [12] *Ibid.*, cc. 420-4.
[13] *Ibid.*, cc. 425-9. [14] *Ibid.*, c. 430-1. [15] *Ibid.*, cc. 432.
[16] *Ibid.*, cc. 432-5. [17] *Ibid.*, c. 435-8. [18] *Ibid.*, c. 438.
[19] *Ibid.*, cc. 474, 475, 544, 581-3, 607. [20] *Ibid.*, c. 507. [21] *Ibid.*, c. 564.
[22] *Ibid.*, cc. 573-4. [23] *Ibid.*, c. 594. [24] *Ibid.*, c. 603. [25] *Ibid.*, c. 626.
[26] *Ibid.*, c. 633. [27] *Ibid.*, cc. 656-7. [28] *Ibid.*, cc. 665-7. [29] *Ibid.*, c. 678.
[30] *Ibid.*, c. 658. [31] 498 *Hans.*, 793. [32] 44 *Hans.*, c. 1512.
[33] *Ibid.*, c. 1761. [34] 347 *Hans.*, c. 504. [35] 499 *Hans.*, cc. 662-3.
[36] *Ibid.*, cc. 746-880. [37] *Ibid.*, c. 745. [38] *Ibid.*, cc. 1668-1786.

IX. BILLS WHICH THE AUSTRALIAN SENATE MAY OR MAY NOT AMEND

By J. E. Edwards, J.P.
Clerk of the Senate of the Commonwealth of Australia

Sections 53 and 54 of the Commonwealth of Australia Constitution read as follows:

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

In accordance with the Constitution, it has been the practice of the Senate, ever since the Federation, to treat the annual Appropriation Bill covering the " ordinary annual services " of the Government as a Bill which it may not amend. Any desire on the part of the Senate to have such a Bill amended could, therefore, only be carried out by way of request to the House of Representatives. On the other hand, the Appropriation (Works and Services) Bill which appropriates a sum out of the Consolidated Revenue Fund for the purposes of Additions, New Works and other Services involving Capital Expenditure, has always been regarded as one over which the Senate may exercise the power of amendment.

In his annual Report covering the financial year ended June 30, 1951, the Auditor-General drew attention to what he considered to be, as between these two classes of financial measures, a lack of uniformity in the services for which provision had been made, inasmuch as many services of a capital nature were also included in the Appropriation Bill. With a view to clarifying the legal requirements he sought the advice of the Solicitor-General on the purport of the words " ordinary annual services of the Government " in Section 54 of the Constitution. In an Opinion submitted by the Solicitor-General it was stated to be his view that an ordinary service is virtually any service which the Government is competent to

provide pursuant to its powers and authority, and that most appropriations now made by separate Acts dealing with works and services might be properly regarded as expenditure on the ordinary annual services of the Government, because the works and services are those which the Government could have ordinarily been expected to provide within the framework of its powers. In the light of the views expressed in this Opinion the Auditor-General questioned the necessity of having separate appropriation Bills for " Departments and Services " and " Capital Services ".

When the Appropriation (Works and Services) Bill 1952-53 was received from the House of Representatives on September 11, 1952, and Motion moved for the First Reading, the Leader of the Opposition (Senator McKenna) raised a point of order quoting the opinion of the Solicitor-General, and affirmed that if this opinion were accepted by the Senate it followed that the present Bill might come within the category of " Bills which the Senate may not amend ", and under Standing Order 190 debate could take place on the First Reading.

(*NOTE.* Standing Orders 189 and 190 read as follows:
189. Except as to Bills which the Senate may not amend, the Question " That this Bill be now read a First time " shall be put by the President immediately after the same has been received, and shall be determined without Amendment or Debate.
190. In Bills which the Senate may not amend, the Question " That this Bill be now read a First time " may be debated, and in such debate matters both relevant and not relevant to the subject-matter of the Bill may be discussed.)

After an interesting debate in which both the Leader of the Opposition, and the Attorney-General (speaking for the Government) could not give any valid reasons why an Appropriation (Works and Services) Bill should be treated differently to the ordinary Appropriation Bill, the President ruled as follows:

He stated that his duty was to interpret the Standing Orders, and he should not be called on to decide constitutional questions except in so far as the Constitution was a guide to procedure and action in the Senate. This was in accordance with rulings given by his predecessors.

In the case before him there was a clear relationship between Sections 53 and 54 of the Constitution and the practice of the Senate.

A similar question had been raised in the Senate as far back as the 20th June, 1901, and a practice was established then of submitting separate Bills, one of which the Senate could amend, and the other it could not. The system had worked very well for more than fifty years.

He quoted Standing Order No. 189, (see above), and continued that the Message just read to the Senate indicated that this Bill was similar to previous Appropriation (Works and Services) Bills, and as the practice of treating this class of Bill as an " Amendment Bill " had stood for so long he saw no reason to vary it now. The point of order was to some extent hypothetical. If in the future the Government combined the two classes of Bills the question as to whether the Constitution was complied with could then be raised.

In order to determine how this Bill was affected by the Solicitor-General's

opinion that *most* appropriations dealing with works and services *might* be regarded as expenditure on the ordinary annual services of the Government, it would be necessary for every item in the Bill to be examined. As the Bill was not officially before the Senate until it had been read a first time, it was impossible for him to pronounce upon it immediately. Section 54 of the Constitution provides that " the proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation "—so that if the Bill contained even one item which did not come within the category of " ordinary annual services ", it would be open to amendment by the Senate.

In all the circumstances he ruled that the motion for the first reading of the Bill was not open to debate, and that it must be proceeded with in the usual way as an " Amendment Bill ".

He suggested that as the Bill was urgent his ruling might be allowed to stand, and that an opportunity be given to the Senate to consider the matter and decide it before the next Bill of the same kind came before the Senate.

In the light of this Ruling and to enable the Senate to further consider the matter, Senator McKenna moved that the Ruling of the President be dissented from. The debate thereon was automatically adjourned and the Bill was subsequently passed by the Senate.

This Motion of dissent was later withdrawn by Senator McKenna and in its place he moved the following Motion on November 4, 1952:

That this Senate, having considered the opinion of the Solicitor-General (appearing in the Annual Report of the Auditor-General for the year ended 30th June, 1951) on the meaning of the expression " ordinary annual services of the Government " in section 53 of the Constitution, agrees—That the opinion of the Solicitor-General—to the effect that most appropriations now made by separate Acts dealing with works and services might be properly regarded as expenditure on the ordinary annual services of the Government, because the works and services are those which the Government could have ordinarily been expected to provide within the framework of its powers—is well founded.

To this Motion the Attorney-General (Senator Spicer) moved an amendment with a view to making it read:

That the Senate, having considered the opinion of the Solicitor-General, appearing in the Annual Report of the Auditor-General for the year ended 30th June, 1951, that an appropriation for the ordinary annual services of the Government can properly include or comprise appropriations for expenditure of a capital nature, resolves to act in accordance with that opinion in determining whether or not an Appropriation Bill is one which the Senate may not amend.

Senator Spicer's proposal, to which the mover of the original Motion, Senator McKenna, was in agreement, sought to affirm that an appropriation for the ordinary annual services of the Government can properly include expenditure items of a capital nature.

Senator Wright (Tasmania) in opposing both the Motion and the amendment argued that the amendment proposed writing into the records a false guide in determining whether or not an Appropriation Bill is one which the Senate may not amend. He contended that the constitutional test is whether a Bill appropriates revenue or

moneys for the ordinary annual services of the Government—not whether or not the Bill includes expenditure of a capital nature.

The whole question was treated as a non-party determination and the Ayes and Noes being equal, both the Motion and the amendment were defeated. And so, for the time being at least, the practice of the Senate in dealing with the Appropriation (Works and Services) Bill, which has been maintained for over 50 years, will continue. However, it is understood that the question of whether the many capital items which at present appear in such Bill could be included in the ordinary Appropriation Bill is now the subject of an investigation by the Parliamentary Public Accounts Committee.

X. MINISTERS' AND MEMBERS' SALARIES

By F. C. Green, M.C.,

Clerk of the House of Representatives of the Commonwealth of Australia.

The Constitution of the Commonwealth of Australia provides:

Section 48.—Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Section 65.—Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

Section 66.—There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

The power to otherwise provide was exercised by the Parliament at various times through legislation, the position at the end of 1951 being:

Parliamentary Allowances Act—provided for the payment of an allowance to each Member of the Senate and of the House of Representatives. It also provided for the payment of additional amounts to the Leaders of the Opposition in both Houses and to the leader of a third party in the lower House.

Annual Appropriation Act—appropriated additional amounts as salaries for President of Senate, Speaker of the House of Representatives, and Chairmen of Committees in both Houses.

Ministers of State Act—made provision for 20 Ministers and appropriated £29,000 p.a. for payment of their salaries. Distribution of this amount was at the discretion of the Prime Minister.

Parliamentary Salaries Adjustment Act—provided for a special expense allowance for the Prime Minister.

Parliamentary Retiring Allowances Act—Provided for the payment of a parliamentary pension.[1] A compulsory contribution of £3 per week was deducted from the parliamentary allowance paid to each Senator and Member.

Details of the payments under these Acts are contained in a later comparative table showing amounts previously paid and those approved by the Parliament on the recommendation of the Committee.

In a statement made to the House of Representatives on November 13, 1951,[2] the Prime Minister (Mr. Menzies) referred to the sharp and progressive increases in the cost of living and the difficulties experienced by Members of the Parliament in trying to meet from their present remuneration the expenses of adequate representation of their constituents. In the past, the Parliament had determined the allowances of Ministers and Members without reference of the matter to any outside body. In recent years, however, some State Parliaments in Australia and the Parliament of New Zealand, had adopted the course of placing the matter of their allowances before an independent and impartial body, and his Government had decided on a similar course. An honorary Committee comprising a former Chief Judge in Equity in New South Wales, a commercial business man and a leading accountant had been formed with the following terms of reference:

1. To inquire into and report upon:
   (*a*) The salaries and allowances payable to the Ministers of State of the Commonwealth in pursuance of the Ministers of State Act, 1935-51.
   (*b*) The allowances payable under the Parliamentary Allowances Act, 1920-47.

2. If it be reported that it is necessary or desirable to alter such salaries and allowances or any of them, then to recommend the nature and extent of the alterations that should be made.

3. Generally, to inquire into and report upon any other matters arising out of or affecting the premises which may come to your notice in the course of your inquiries, and which you may consider should be reported upon.

The Prime Minister concluded by saying that public office should not be a means of private profit, but it should not involve such loss or financial embarrassment as would make it difficult for people without private means to enter the Parliament or to sit in a Cabinet.

The Leader of the Opposition (Mr. H. V. Evatt) supported the course which the Government had taken.

On February 6, 1952,[3] the Prime Minister tabled the Report[4] and informed the House that subject to further consideration of some minor matters and investigation of a constitutional point affecting Parliamentary Under-Secretaries, the Government had decided to accept the recommendations of the Committee.

The principal points of the Report were as follows (unless other-

wise indicated, " Members " is used to indicate both Senators and Members of the House of Representatives):

(1) Information was obtained by interviews with Ministers, the Presiding Officers, the Leader and Deputy Leader of the Opposition, Members representative of all parties and States, the Commissioner of Taxation and representatives of public bodies and labour organisations.

In addition the Committee examined written statements by Members, and statistical and documentary evidence, and perused letters written in response to advertisements in the press.

(2) Evidence disclosed that there were many grave misapprehensions about ministerial and parliamentary salaries and privileges.

(3) The average duration of a House of Representatives is two and a half years, at the end of which a Member of that House must contest an election under either Section 28 (providing that the House of Representatives shall continue for 3 years but may be sooner dissolved) or Section 57 (providing for a double-dissolution under specified conditions) of the Constitution.

In addition a referendum under Section 128 of the Constitution on a proposal to alter the Constitution demands the attention of Members. Three referendums had been held in the last 10 years.

(4) The distance separating the Federal Capital at Canberra (with a relatively small population) from the capital cities of the various States means that a Member is to a greater or lesser degree cut off from his business or profession for at least half the year. None has the opportunity open to Members of a State Parliament of carrying on a business or profession in a centre of population.

Another consequence is that a Member must live in an hotel while at the same time maintaining his home in his constituency, and although the expense is mitigated by a living allowance, the allowance falls short of the whole cost.

(5) The Commonwealth of Australia with 123 Members of the House of Representatives and 60 Senators has an area approximately equal to the United States with 455 Representatives and 96 Senators. Canada is slightly larger than Australia and has 255 Members in its House of Commons. The difference in numbers is explained by the respective populations, but it follows that an Australian Member with a constituency, in some instances exceeding 100,000 square miles, who visits the different centres must incur heavy personal expenses. The free pass on the railways is of very little use to most Members as travel is slow and connections inconvenient and a Member is forced to travel by air or by car. The air travel allowance was generally totally inadequate.

(6) There has been an increasing tendency to make the Federal Member the recipient of the complaints or requirements of the electorate, all of which have multiplied since the end of the second world war.

(7) It is imperative that some effect should now be given to the sharp increases in living costs which had taken place; in future any substantial increases or reductions should be the subject of further revision.

(8) A man who has been a Member for some years is handicapped, at least for a time, on his return to competitive life. This disadvantage was reduced to some extent by the provision of a pension under the Parliamentary Retiring Allowances Act,[1] but the amount of pension was considerably less than the basic wage.

(9) The nominal salary payable to a Member is far in excess of the amount actually available for the maintenance of himself, and his home; in a number of instances, the amount available after taking into account expenses necessarily incurred in the performance of a Member's duties was less than half his nominal salary and, in some cases, was less than the basic wage.

RECOMMENDATIONS.—In the course of its recommendations which are summarised later, the Committee made the following material comments:

Members.—Each Member should receive, in addition to the parliamentary allowance, an expense allowance not liable to taxation which would supersede the deduction for expenses which had until then been made by the Commissioner of Taxation. For the purpose of determining this tax free amount, the Committee proposed the establishment of 5 groups in which electorates would be placed according to their geographic nature. In the case of a Senator, the tax free amount would be a fixed sum common to all. The Committee was of opinion that a Senator, although representing the State as one electorate, was not faced with the same calls as a Member of the House of Representatives.

Ministers.—A Minister's duties are more extensive and constant than those of a Member. His entertainment obligations are greater; his journeys are more frequent and more expensive, and his absences from home more prolonged.

Government has become a business in almost all its departments and each Minister is one of the managers of this business, differing from a commercial executive only in the uncertainty of his position. In the majority of instances, the salary of the Minister is less than that of the head of his department.

The Committee proposed that, instead of the system of uniform gradation and payment of Ministers (except the Prime Minister), a distinction be drawn between the Prime Minister, the Treasurer, and other Ministers; the last mentioned to be classified as senior Ministers and Ministers.

Residences in Canberra should be provided for Ministers. Should this be impracticable, a living and expense allowance should be paid to supersede any other living allowance a Minister might receive.

Prime Minister.—The Prime Minister differs from other Ministers

in regard to the internal affairs of Australia and its relation with other countries. The description of *primus inter pares* applies only to his place at a Cabinet Meeting; it does not apply to his responsibility for the direction of affairs of State which is beyond comparison greater than that of any other Minister or Member. He is *inter stellas luna minores.*

The Committee proposed that the Prime Minister should be paid a special allowance for living, entertainment and other expenses, and that, as the Prime Minister, on retiring from Parliament, should not become immediately dependent on his earning from a profession or business, he be paid on retirement from Parliament or at 45 years of age if he retires before that age, a pension additional to that to which he is entitled as a Member provided he has held the office of Prime Minister for 2 years or intermittently for at least 3 years. Special provision should also be made for the widow of a Prime Minister.

Leaders and Deputy Leader of Non-Government Parties.—The duties of the Leader of the Opposition in the House of Representatives are arduous for he has to be prepared to discuss every Bill and has not the power to call on departmental officers for assistance. His responsibility, while not equal to that of the Prime Minister, is great and his entertainment expenses are by no means negligible. The payment of substantial additional allowances was recommended.

The payment of smaller additional allowances was proposed in the case of the Leader of the Opposition in the Senate, the Deputy Leader of the Opposition in the House of Representatives, and the Leader of a recognised political party, not less than 10 members of which are Members of the House of Representatives and of which no member is a Minister.

Presiding Officers and Chairmen of Committees.—The position of Speaker is one of dignity and responsibility and he is bound to fortify himself with a knowledge of procedure. He is necessarily involved, either alone or with the President of the Senate, in the management of the parliamentary buildings and in the expense of entertainment. The Speaker is not exempt from opposition in his constituency and must fulfil the same obligations as other Members.

With the exception that the position has not the same historical association and the entertainment expenses may not be so heavy, the same comment applied to the President of the Senate. The Committee recommended the payment of substantial additional allowances to be identical in each case.

The payment of a smaller additional allowance to the Chairman of Committees in each House was also proposed.

Parliamentary Under-Secretaries.—The Committee was of opinion that the three Parliamentary Under-Secretaries should be paid a salary additional to the allowance received as a Member, but drew

attention to the doubt that had been raised as to whether the seat of an Under-Secretary would not be forfeited in such an event. He would then be holding an office of profit under the Crown and as he would not be a Minister of State, he would not be within the provision of Section 44 of the Constitution excepting Ministers from the disqualification for membership of Parliament incurred by any person holding such an office of profit.

Party Whip.—The Whip is a necessary part of the parliamentary system and he should receive some additional allowance.

Other Services.—The Secretary service and office accommodation available to a Member in either his constituency or in the capital of his State were necessary to enable a Member to carry on his parliamentary duties.

The existing postage stamp allowance of £8 a month to each Member is in excess of a Member's needs.

The comprehensive Rules governing the air, rail, sea and road transport available to Members and their wives and dependent children were set out in Appendix F of the Report. The Committee was of opinion that the gold pass for rail travel throughout the Commonwealth was of very little use to a Member who travels for the most part by air or by road. It further considered that in many instances the allowance of £50 per annum available to a Member for air travel additional to that provided for the performance of his normal parliamentary duties was inadequate, and that this allowance should be graded in accordance with the classifications determined for the purpose of tax free expense allowance (see earlier note under *Members*). The existing free air travel facilities for the wife or family of a private Member should be restricted to the wife for travel to Canberra twice yearly.

SUMMARY OF RECOMMENDATIONS

	At present	*Recommended*
	£ *p.a.*	£ *p.a.*
Parliamentary allowance, Members of both Houses ..	1,500	1,750 and, in addition, an expense allowance according to constituencies.

Group I	£400
,, II	£500
,, III	£600
,, IV	£750
,, V	£900
Senators	£550

Prime Minister, Deputy Prime Minister, Cabinet Ministers, Speaker, President and all other office bearers to receive the above for their electorate responsibility and ***in addition*** the following:

	At present £ p.a.	*Recommended* £ p.a.
Prime Minister	1,900	
plus Act 2, 1938 expenses	1,500	4,000 *plus* entertainment allowance £3,500 p.a.
Treasurer	1,350	2,500 *plus* £1,000 expense allowance
Senior Ministers	1,350	2,250 *plus* £1,000 ,, ,,
Ministers	1,350	1,750 *plus* £1,000 ,, ,,
Deputy Prime Minister (not Treasurer)	—	300
Speaker and President	1,600	1,750 *plus* £250 ,, ,,
Chairman of Committees	900	900
Leader of the Opposition in the House of Representatives	600	1,750 *plus* £1,000 ,, ,,
Leader of the Opposition in the Senate	300	750 *plus* £250 ,, ,,
Deputy Leader of the Opposition in the House of Representatives	—	750 *plus* £250 ,, ,,
Leader of Third Party	400	500
Whips:		
Government—Liberal Reps.	275	275
Liberal Senate	275	275
C.P. Reps.	275	275
C.P. Senate	275	275
Opposition Reps.	—	275
Opposition Senate	—	275
Under-Secretaries	—	500

Pensions

(*a*) *Senators and Members.*—The present pension of £8 per week to be raised to £10 per week in respect of a Member or former Member of either House who attains the age of 65 years and who has ceased to be a Member of Parliament but with no further contribution from the individual Member concerned.

(*b*) *Prime Minister.*—After 2 years continuously or 3 years intermittently in office as Prime Minister (either before or after this Act) upon retiring from the Parliament—and reaching 45 years of age—£1,200 per annum. Widow, £750 per annum. In the cases of both the Prime Minister and the widow of a Prime Minister the pension to be in addition to that otherwise payable under the Parliamentary Retiring Allowances Act, 1948, but without any additional contribution by the Prime Minister.

General Items

1. Living allowance whilst attending sittings in Canberra, at present 36/– per day, to be increased to 50/– per day.
2. Travelling allowance to Ministers when absent from home town on business at present £5 5s. per day, to remain the same.
3. Travelling allowance to Ministers when in Canberra, at present 52/6 per day, to be abolished.
4. Travel facilities for a Member to New Guinea, Norfolk Island and the Territory to be withdrawn except on public business.
5. No further Gold Passes to be issued and travel arrangements to be made by warrant.

6. The present position relating to the provision of a typist-secretary to be reviewed, having in mind a general reduction by grouping the work of city and suburban Members and also Senators from the same party.
7. Telephone facilities: A general tightening up, particularly in the use of long distance telephones.
8. Stamp allowance: A reduction of 50% to £4 per month.
9. Air facilities: An allowance to be paid against evidence of travel and in accordance with the classification of the electorates as follows:

Group I	£50
„ II	£75
„ III	£100
„ IV	£125
„ V	£150
Senators	£75

10. The free travel facilities for the wife or family of a private Member to be withdrawn and free travel to be extended to the wife of a Member only for travel to Canberra twice per annum.

Adoption of Recommendations

With the exceptions referred to later, these recommendations were given effect by legislation in the case of the parliamentary allowances and salaries, including retiring allowances, and by executive action in the case of general items.

On February 21, 1952,[5] the Prime Minister introduced into the House of Representatives 4 Bills which, after minor amendment in one case, passed both Houses and, on March 13, 1952, received Royal Assent to become:

Ministers of State Act (No. 1 of 1952)—made provision for 20 Ministers and for £41,000 p.a. for the payment of their salaries (distribution at the discretion of the Prime Minister) and for the payment of the Prime Minister's entertainment allowance and other Ministers' expense allowances.

Parliamentary Allowances Act (No. 2 of 1952)—provided for the payment of parliamentary allowances and constituency expense allowances to all Senators and Members (including Ministers) and for additional allowances to Presiding Officers, Chairmen of Committees, Leaders and Deputy Leader of the Opposition, Leader of third party, and Whips.

Parliamentary Retiring Allowances Act (No. 3 of 1952)—amended the original Act to provide for the pension increases recommended by the Committee.

Income Tax and Social Services Contribution Assessment Act (No. 4 of 1952)—amended the original Act to provide that the expenses and entertainment allowances payable under the Ministers of State Act and the Parliamentary Allowances Act should not be subject to income tax.

The Acts contained provision for the new allowances to be paid as from January 1, 1952.

The Parliamentary Allowances Bill was amended in the House

of Representatives to increase the allowance payable to the Government Whip in that House from £275 to £325.

The recommendations listed under " General Items " were given effect with the following exceptions:

No. 5.—The issue of Gold Passes for rail travel was retained.

No. 6.—The provision of a typist-secretary for each Senator and Member was continued.

No. 8.—The stamp allowance was reduced by 25% to £6 per month.

[1] Vol. XVII, p. 30 [2] 215 *Hans.*, pp. 1869-70. [3] *Hans.*, 6/2/52, p. 19.
[4] Parliament of the Commonwealth—Salaries and Allowances of Members—Report of the Committee of Inquiry. [5] *Hans.*, 21/2/52, pp. 210-17.

XI. NEW ZEALAND: PROPOSED ALTERNATIVE TO FORMER SECOND CHAMBER

By Owen Clough, C.M.G.,*
Honorary Life President of the Society

The question of the position of the Second Chamber under the Constitution of New Zealand has been the subject of article and editorial note in the JOURNAL from time to time.[1]

Although the Joint Constitutional Reform Committee of 1947-48 was unable to come to agreement on the question of a reformed Legislative Council and the Committee of the Legislative Council and the House of Representatives reported a negative result, the Committee representing the Legislative Council on the Joint Constitutional Reform Committee placed before the Council its proposals for reform. Though these were prepared as a basis for discussion by the Joint Committee they did propose definite reform by the election of three-fourths of its members by the House of Representatives and one-fourth by the Governor-General. The Council Committee's proposals were endorsed by the Council, an indication that the Council as then constituted was in favour of reform. However, on September 15, 1950, the House of Representatives:

Ordered, That a Select Committee be appointed, consisting of seven members to consider the establishment of some other or like body as an alternative to the present Legislative Council, the Committee to have power to sit together and confer with a similar Committee of the Legislative Council and to agree to a joint or separate report; the Committee to consist of the Hon. Mr. Algie, Mr. Halstead, Mr. Hanan, Mr. Hayman, the Hon Mr. Marshall, Mr. D. M. Rae, and Mr. Tennent.[2]

* I feel that an explanation is due from me for contributing this Article, but before I relinquished my duties as Editor of this JOURNAL, I arranged with the learned Clerk of the New Zealand House of Representatives, Mr. H. N. Dollimore, LL.B., to be supplied with the Parliamentary Paper and *Hansard* on the subject.—[O. C.].

It was also Ordered that, subject to the direction of the Committee, their proceedings be open to accredited representatives of the press, and that as and from January 1, 1951 (the date of coming into force of the Legislative Council Abolition Act, 1950), the members appointed by the Legislative Council to a similar Committee be deemed to have been co-opted to the Committee appointed by the House of Representatives as above. The co-opted members were the Hon. T. O. Bishop, T. Bloodworth, T. Brindle, M. Connelly, J. E. Duncan, R. Eddy, M. Fagan, W. Grounds, B. Martin, J. T. Paul, Sir William Perry, J. Roberts, W. J. Rogers and D. Wilson.[3]

The Committee was given power to sit during Parliamentary Recesses and the period within which the Committee was ordered to report was extended from time to time until July 15, 1952,[4] when it reported to the House of Representatives.

Special Reports.—At its final meeting on July 1, *idem*, Special Reports were made recording Resolutions expressing appreciation: (1) of the able manner in which the Chairman (the late Hon. T. O. Bishop, Speaker of the Legislative Council) and the Hon. R. M. Algie, M.P. (Minister of Education) had conducted the business of the Committee; (2) of the services rendered by the Hons. R. M. Algie, J. T. Paul and T. Bloodworth, as members of the Editorial Sub-Committee; and (3) of the services rendered by Mr. R. J. MacDonald, who carried out the duties of Clerk to the Committee. These Reports were considered and Tabled on July 15.[5]

Report of the Constitutional Reform Committee, 1950-52.—This Parliamentary Paper[6] which was laid on the Table of the House of Representatives on July 15, 1952,[5] covers 48 pp., and in addition to a Preface, Introduction, Summary of Conclusions, consists of 9 Sections dealing respectively with: 1, Bi-cameralism: A General Note; 2, An Appropriate Name for a Second Chamber; 3, The Honorarium of a Senator; 4, The Term for which Office should be held in a Second Chamber; 5, The Number of Members; 6, The Principles upon which the Selection of Members for a Second Chamber might be made; 7, The Powers, Duties and Functions of a Second Chamber; 8, Regulation of Proceedings of Senate; and 9, The Joint Select Committees; with Appendices as follows: A, How Constitutions can be Created; B, Can we have a Written or more or less Rigid Constitution? The Value of "Entrenched" Provisions? C, The Question of Veto; and D, The Legislative Council: Brief Summary of salient Events in the History of.

Preface

In the Preface to their Report, the Committee observe that many factors had operated as contributory causes for the considerable time which had elapsed between the date of their appointment and the completion of their work. Moreover, first the illness and then the death of the Hon. T. O. Bishop had deprived the Committee of

one who would have been a material help in drawing up their Report.

In the first place, the Committee considered that a Committee of 14 was too large for the type of work they had to do.

Considerable thought was given to the question of single or dual Chamber government as well as to the special merits of the latter. The Committee were of opinion, however, that they were not primarily required to express a considered opinion on this question but that their task was limited to finding a worthwhile alternative to the former Legislative Council, which had been in existence for nearly 100 years, and what form that alternative should take.

The Committee felt that they had to blaze a new trail, as they had no case in which a fully-sovereign, independent and uni-cameral State, situated as New Zealand was to-day, had re-imposed the dual system upon itself, which at once made it more difficult to plan an alternative to the former Legislative Council.

It was clear that many people wanted a second Chamber of some kind, which could, if need be, criticise, amend, and even delay, for a reasonable time, decisions in the popularly-elected House, but they did not think that the authority of a second Chamber should be absolute. The abolition of their second Chamber had left the so-called " sovereign " people with no constitutional weapon, save public opinion (which could be ignored) except the individual vote exercisable once only every 3 years.

The Committee had, to some extent, to steer a course between bi-cameralism and an all-powerful, independent and uni-cameral Legislature. They had proposed a second Chamber that would give to the people the utmost control they could fairly hope for under New Zealand's special local conditions. They had therefore proposed a Chamber so constituted as to be in a position to render a most valuable service in the actual work of Government.

The Committee were confident that their plan, if wisely operated, would secure for their second Chamber more highly qualified and more suitable men and women than the previous system was able to provide and a second Chamber which would be a benefit and a credit to the community.[7]

Introduction

This comprises a recapitulation of the events in Parliament in connection with the Legislative Council from 1914 until its abolition in 1950, account of which has already appeared in the JOURNAL[8] and also the names of some 34 persons who, in reply to widely advertised meetings of the Committee, were invited to give evidence. That heard before the Joint Committee of 1947-48 by professors of law, newspaper editors, Statesmen, etc., was also under consideration by the Committee of 1950-52.

Among the witnesses, 7 favoured an Advisory Council or Com-

mittee, 4 an elective, 11 an indirectly-elected, second Chamber, and 5 a nominated one. The Committee reported that:

> There were some who proposed the establishment in New Zealand of a modified form of Federation of the county and municipal bodies which would subscribe to a written Constitution, which would not be capable of alteration by Parliament without the consent of the contracting parties. Some thought that an Advisory Council composed of from five to twelve men of the highest qualifications, but not having legislative power, would be preferable to a second Chamber of Parliament. But, as already stated, the idea that was most strongly supported was a second Chamber to be an integral part of Parliament, the members to be secured by some method of indirect election.
>
> Methods suggested were election by the local government bodies only; elections by sections of the community as, for instance, chambers of commerce, professional groups, industrial groups, manufacturers, primary producers, etc.; election by members of the House of Representatives on a proportional basis and the setting up of a special electoral college.[9]

The Question for Consideration

The Committee felt that the task entrusted to them was a difficult one. They were directed " to consider the establishment of some other or like body as an alternative to the present Legislative Council ", which the Committee interpreted as imposing upon them two separate obligations, first, to search and suggest " some other or like body " as an alternative to their one-time Legislative Council; secondly, to recommend any such alternative as being both desirable and practicable.[10]

At the outset the Committee rejected an Advisory Committee of Experts to conduct research and make their conclusions available to the Government, if and when occasion arose.

In their search for an alternative to their one-time Legislative Council they found that in the constitutions of modern States the bi-cameral principle was the characteristic of most important States. The evidence placed before the Committee drove them to the conclusion that some form of second Chamber was very definitely desired by those who had given thought to the matter in New Zealand; this was supported by the press, who had expressed the hope that a workable plan would evolve from the Committee which formed the opinion that New Zealanders were not opposed to the bi-cameral system but to the Legislative Council as at present constituted. The objection was the use or abuse of the single-party nomination principle for a second Chamber.

The Committee remark that:

> In New Zealand minority opinion has no written constitution of any kind to which it can appeal; it cannot seek the aid of any Court to declare invalid any Act of Parliament; it has now no second Chamber with even limited powers of discussion or delay; the fate of minorities in this country is now entirely in the hands and at the mercy of any kind of single Chamber that a majority of the people may elect.

The emphasis had been upon the " checks and balances ", and the limitation of and restrictions upon the authority of the elected

House.[11] A written constitution was a formal document making provision for the distribution of political power within a State and which prescribed the manner in which that power was exercised by those in whom it was vested. Checks and balances were designed to serve an exactly similar end. In support of this were quoted the Magna Carta, some Acts passed in the Tudor period, the Petition of Right, the Bill of Rights, the Reform Bills, the Parliament Act of 1911, etc. To-day, political power rested with the people: the struggle for supremacy was over so far as the democracies were concerned.[12]

Section 1: Bi-Cameralism: A General Note

Section 1 of the Report is devoted to quotation from opinions and arguments of the well-stocked field of leading constitutional jurists and historians showing the necessity for a second Chamber, and the Committee are of opinion that such a Chamber is justified, not so much, however, for its powers of restriction, as upon the value of the practical assistance that a Chamber of the kind they propose could render in the normal business of Parliament.

The Committee put the question that if history teaches us that a second Chamber is necessary where the Legislature is controlled by a written and rigid constitution, is such a second Chamber less or more necessary in those cases where the Legislature is controlled by no constitution at all; where it can make and unmake whatever legislation it pleases; and, where it can use this power in and through a single Chamber subject to the severe discipline of the party system and to no effective checks, save only that of the will of the people expressed at a general election?

The Committee believe that there is a real need for some form of checks and balances in a uni-cameral State and they propose a second Chamber able to play a useful part in the work performed by the Legislature. The Committee say:

> We argue, with confidence, that the need for such help is real and pressing, and we contend that a body of the kind we propose could make such a valuable contribution in this respect as would fully justify its establishment at an early date.[13]

Conclusions to Section 1

The Committee summarise their recommendations as follows:

1. We are of opinion that a second Chamber, constituted in the manner recommended in this report, and entrusted with the powers, duties, and functions which are fully discussed herein, would give to the people of the Dominion a very desirable and useful institution in the political administration of a fully sovereign and unitary State such as New Zealand, and that it would prove to be a practicable and worth-while alternative to the Legislative Council which was abolished by an Act of the New Zealand Parliament passed in the year 1950.

Under existing conditions, the justification for the setting-up of such a second Chamber must rest not upon its power to override, restrict, or delay

the activities of the elected House of Representatives, but rather upon its ability to render efficient, wise, and practical assistance to that House in the discharge of duties which tend to increase in number, in scope, and in complexity.[14]

Sections 2 and 3: An Appropriate Name for a Second Chamber and the Honorarium of a Senator

In regard to these 2 subjects, the Conclusions of the Committee are summarised as follows:

Conclusions to Sections 2 and 3

2. The second Chamber should be known as " The Senate ", and its members should be referred to as " Senators ". The term " Honourable " should not be employed as a part of the title of a Senator; it is better, on the whole, that this word be used as part of the title of a Minister of the Crown, and not with that of any other member of the Legislature.

3. Senators should be paid for their services. We make no recommendation as to what their remuneration should be. This is a matter which could well be determined in the same way as is now followed in the case of members of the House of Representatives.[15]

Section 4: The term for which office should be held in a Second Chamber

The Committee are not in favour of either hereditary or life membership. A suggestion was put before them:

(1) That members of the Chamber be appointed for six years;
(2) That half of them should retire at the end of each three years term; and
(3) That no member should be eligible for more than six years of service in such second Chamber.[16]

The Committee finally decided to adhere to a term of 3 years with provision for reappointment for one or more terms of a like duration.

In reaching this conclusion they were influenced by the following factors:

(1) If men were given an appointment for a term of six years with no chance of reappointment for a further term, the community as a whole, and Parliament in particular, might frequently be deprived of the services of those whom it might be most desirable to retain in the public interest for a longer term.

(2) If it be argued that an appointment for a term of only three years would involve the making of very heavy sacrifices on the part of those who accepted office, it could be replied that their position in this repect would be no worse than that of members of the House of Representatives.

(3) If it be suggested that a brief term of three years with a chance of reappointment might result in our getting a type of man who would be lacking in independence of thought and action, it could be answered that as the power of appointment in the scheme we recommend rests upon the principle of nomination, it would be the responsibility of those whose privilege it was to make such nominations to see that the right type of person was chosen for office.

(4) It was said that a term of three years was too brief a period for men to learn the technique of parliamentary service and to become fully conversant with the tasks of legislation. A longer term would overcome this objection. A provision to the effect that half the members should retire

every three years would give a greater measure of continuity to the work of the second Chamber. Such arguments apply with no more force to a second Chamber than they do to the Popular Assembly; and, moreover, we are of the opinion that the men appointed are not likely to be strangers to public service or to parliamentary practice. We do not feel that the leaders of the public parties will limit their choice solely to people of eminence in commerce, industry, the professions, art, or letters. We think that mere eminence will not be the determining factor. On the contrary, it is our hope and belief that, because our second Chamber will be given work to do that will call for a knowledge of and some experience in public affairs and administration, the leaders of the parties will of necessity have to be on the look out for men who will have the qualities, training, and ability that will be necessary for the due and faithful performance of their tasks.

(5) Lastly, it is implicit in the six-year proposal that half shall retire every third year, and it would follow that in some cases the people who shall retire shall be determined by lot. Such a procedure is common enough in company practice, but in such cases it is usual that those who are retired by ballot may offer themselves for re-election in the ordinary way. We feel that rejection by the spin of a coin or other similar means is not a desirable procedure for the withdrawal from office of a member of a second Chamber, and this view is strengthened a little by the fact that the rejected member is not permitted to offer himself for reappointment.[17]

Conclusions to Section 4

These were as follows:

1. That the life of the second Chamber should be the same as that of the House of Representatives, and that members of such Chamber should be appointed for a normal term of three years; each and every member, however, should be eligible for reappointment for a further term or terms.
2. That, subject to the above provision, the members of the Chamber should continue in office until their successors had been duly appointed. This would enable the Government to hold a session of Parliament soon after an election and before the machinery for appointing the members of the next Chamber had had time to function.[18]

Section 5: The Number of Members

In regard to the number of Senators, the Committee were guided by the 2 following principles:

(1) In the first place, the number should not be too large, but it should be large enough to enable its members to discharge properly the functions assigned to them, and

(2) In the second place, we think that the number of members should be fixed in the statute which creates the Senate, and that that number should be alterable only in the same manner as the constitution, powers and functions of the Senate itself may be altered.[19]

Conclusions to Section 5

The Senate should consist of 32 members. This number should be fixed by statute. If alterable at all, it should be changed by statute and *then* only in such a way as may be prescribed for the making of changes in the law relating to the composition, functions and constitution of the Senate. No Government should have authority in a purely executive way to change the number of members of the Senate. "Swamping" in the commonly accepted use of that term, should not be possible.[20]

Section 6: The Principle upon which the Selection of Members for a Second Chamber might be made

The Committee considered this subject in great detail. Objections were, in turn, made to the nominated system, a " functional " Chamber and either direct or indirect election. The Committee, while fully alive to the weaknesses and defects of these 3 systems of selection, state that they were driven by logic and history to the conclusion that the best way of securing the kind of Chamber they wanted was by the use of the nominative principle.

They have in mind a second Chamber of a particular kind designed to perform a special service which would function successfully under constitutions existing in New Zealand; they state that:

The second Chamber which we have decided to recommend must have the capacity for work—work of a high and useful kind. The Senate's claim to exist at all must depend not so much upon checks and balances, not so much upon its power to initiate, to correct or to delay the legislation of the Popular Chamber, but rather upon its ability to work with that Chamber and to help it when and where that help may be most needed.[21]

Their second Chamber must be hand-picked, not nominated by the Prime Minister alone but by the Leaders of both or all of the parties represented in the Popular Assembly, and the total number of the second Chamber must be fixed at 32 and the number nominated by each party to bear the same ratio as that which exists as between the parties in the House of Representatives at the time when the nominations are made.

Lists would be prepared by such Leaders and sent to the Prime Minister not later than the expiration of 2 months from the date on which the result of the general election for the House of Representatives is officially declared.

The Prime Minister would then forward such lists to the Governor-General not later than 3 months from the day on which the general election results were officially declared. The appointments would accordingly be made by the Governor-General and the members so appointed would take office from the notification of the date of their appointments in the *Gazette*. The numbers to be nominated by the respective Leaders would be worked out in the following manner:

(*a*) If the party which constitutes the Government holds, say, 46 seats, then the number to be nominated by the Prime Minister will be:

$$\frac{46}{80} \times 32 = 18{\cdot}4.$$

The benefit of fractions should in all cases go to the Government to give it a clear working majority; and, on these figures, the Prime Minister would be entitled to make 19 appointments to the second Chamber.

(*b*) In such a case as we have imagined, the Leader of the Opposition would normally command 34 seats in the House. In that case he would be entitled to nominate:

$$\frac{34}{80} \times 32 = 13{\cdot}6.$$

As he would not have the benefit of fractions, he would be entitled to submit a list of 13 names for appointment to the second Chamber.

(*c*) If there should be a group in the House owing allegiance neither to the Government nor to the Opposition, then in such case the members of such group, by agreement amongst themselves, should have the right to submit to the Prime Minister such a number of nominations as would be proportionate to their relative numerical strength in the House. If after the lapse of the said period of two months they failed, refused, or neglected to make such nomination, their right to do so would vest in the Prime Minister and should be exercisable by him in such manner as he thought fit.

(*d*) If for any reason a vacancy occurred amongst the members of the second Chamber, such vacancy would be filled in the same manner and by the same persons as was the case with the member whose death, retirement, resignation, or disqualification caused such vacancy.

(*e*) The members of the second Chamber would hold office during the lifetime of the Parliament in which they received their appointments; but this rule should be subject to two qualifications:

(i) Each appointee will on the expiration of his term of office be eligible for reappointment, and

(ii) In all cases the members of the second Chamber will remain in office and will be fully competent to act until the date upon which their successors are appointed.

The Committee further remark that:

This would mean that a dissolution of Parliament would not of itself put an end to the life of the second Chamber. It is just possible that, very soon after a general election, a Prime Minister might find it necessary or desirable to hold an early session, and it may well be that he would wish to do so on a date prior to that upon which the new second Chamber could be constituted. By virtue of the above provision he would be sure of a second Chamber, and, if need be, he could carry on until the provisions set out above could be given effect to.[22]

The Committee's recommendations upon this particular subject are as follow: that the plan outlined above will give a second Chamber constituted on party lines, but one in which the Government of the day will always have—in theory at least—a satisfactory working majority.

By giving a power of nomination to the political leaders in the Popular Assembly, and exercisable on the basis of relative party strength, an element of " competition " is introduced which should obviate the defects and abuses of the single-party nominating system of other days. In the first place, the Leader of the Opposition will have good and sound reasons for seeing that his party is as strong in the second Chamber as it is possible for him to make it; and this fact will prompt him to weigh wisely the claims of distinction and ability as against the dictates of party patronage. The Leader of the Government will be moved by similar consideration. He will have his rival's list of nominations in his hands before he sets out to finalise his own. He will be concerned to match that list with one that is better or at least as good; and he will know that both lists will soon become public property.

The Committee consider that the procedure outlined above should

give to the Leaders of the rival political parties a simple, practical, and satisfactory way of securing for a second Chamber the services of those men and women who by reason of their training, experience, and special qualifications could make a really worthwhile contribution in the field of parliamentary government. No better plan could be agreed upon to put before the Government for its consideration.[23]

Conclusions to Section 6

The Senate should be a nominated, and not an elected body. The power to make nominations should be enjoyed by the several parties in the House of Representatives, and it should be exercised by the leaders of such parties in the name of the groups they lead. Each party should have a right to make such a number of the thirty-two nominations as will be proportionate to the relative numerical strength of that party in the House of Representatives. The leaders of the opposition party or parties would prepare their lists and deliver them to the Prime Minister, who would then prepare his list and forward them all to the Governor-General for approval and publication in the *Gazette*.[24]

Section 7: The Powers, Duties and Functions of a Second Chamber

The Committee state that they base their justification for a second Chamber in part only upon its power to restrain the activities of the elected House and in the main upon its ability to play a useful part in normal parliamentary government.[25]

The second Chamber should provide, so far as reasonable, those checks and balances that are needed to protect a people against possible abuse or misuse of power by the Popular Chamber; this would be limited to a power of delaying for a time legislation of which it could not approve and with regard to which it was desirable that public opinion should be given a chance to make its voice heard.

It should be given such other positive duties or functions as would enable it, in a very real way, to assist the Popular Chamber in the performance of those duties which are fast becoming too numerous and too exacting for the members of the Popular Chamber. It is constantly alleged that the parliamentary system is being forced to give way in favour of bureaucratic administration for the reason that the House and its members have not the time needed for grappling with the details of complex legislation or with the multifarious tasks that are now the normal routine of parliamentary life. A well-constituted second Chamber could render invaluable assistance to a Popular Chamber if the services and abilities of its members were used to assist the members of the Popular Chamber in some practical way. We therefore think that, in addition to its power of delaying for a time the actions and decisions of the Popular Chamber, the second Chamber should have the following powers, duties, and functions.[25]

Section 7 A: Ordinary Powers Relating to Legislation

In place of the present Statutes Revision Committee of the House of Representatives, it is proposed that a Joint Committee of both Houses perform these functions. Should the elected House choose to put a Bill through all its readings without reference to any Committee, it will then go to the Senate which will have a new power, namely, at any stage after a Bill is received from the House

of Representatives, to intimate by message to the Speaker of such House that the Senate cannot accept the Bill, or some part of it. The 2 Houses will then try to secure by compromise a Bill in such a form as will satisfy both Chambers, and if such compromise is not secured within 2 months, the Senate must give way.

The House of Representatives may then send the Bill up again with such amendments as may have been agreed to by both Chambers; or, if none of the proposals of the Senate have been accepted by the House, then the Bill may, at the end of such period of 2 months, be sent up again. In either of these cases it shall be the duty of the Senate to pass the Bill and to allow it to go forward in the usual way to the Governor-General for the signification of the Royal Assent. When that assent has been given, the Bill shall become law in the ordinary way.[26]

Section 7 B: Power of Members of Senate to initiate Legislation

The Committee are of opinion that it should be competent for Senators to initiate Bills in the Senate, and remark that:

> There are circumstances under which a Government might find it of great advantage to have a measure introduced into and debated by a second Chamber; and it is always possible that some very useful legislation might originate from a body of the kind envisaged in this report. In any event, such a power has existed in the past, and we see no good reason why it should not be continued.[27]

Section 7 C: Procedure as to Money Bills (*see* Conclusions to Section 7 below)

Section 7 D: Special Powers excercisable through Joint Select Committees of both Houses

The Committee observe that at the present time the House of Representatives entrust a great deal of very important work to Select Committees, which hear the evidence, carefully deliberate on all material submitted to them and report their conclusions to the House.

Four of these Standing Committees are:

(*a*) The Statutes Revision Committee,
(*b*) The Local Bills Committee, and
(*c*) The two Committees on public petitions.

The Committee also observe that each Committee consists of 9 or 10 members; there are other Committees, too, which may call for the services of a similar number of members; and as Committees are not expected to sit while the House is in session, and as there are not many free hours in any parliamentary week when they can sit, it is clear that this kind of work imposes a heavy strain upon the time of individual members. It often happens, too, that because the number of members in the House is limited to 80, there is no alternative but to call upon some members to serve on 2 or even 3 Committees. The work done by them is often very

exacting and difficult. In the Committee's view, it is here that a Senate could render a most valuable service to the elected House.

The Committee propose that the Senate—acting by and through Joint Select Committees—should deal with the work now handled by the 4 Standing Committees above-mentioned.[28]

The main functions of the Senate shall be performed by Joint Committees representative of the 2 Houses. This, however, would not prevent the Senate exercising these powers by and through its own Select Committees not covered by the 3 subjects above-mentioned.

Joint Select Committees under (*a*) and (*b*) above would relieve the House of Representatives of much responsibility at a time when they are pressed hard with work for other tasks.

In regard to matters coming under (*c*), the present Prime Minister and some of his predecessors have wished to make an appeal by Petition to Parliament a worth-while factor in public administration and make the citizens feel that such Petition was in truth an appeal to the highest Court in the land.[29]

Examination of all Delegated Legislation—Statutory Regulations and Orders in Council made pursuant to Statutory Authority

The Senate—acting through an appropriate Joint Select Committee—would examine all regulations and Orders in Council after they had been published in the *Gazette* and/or laid on the Table of the House. The purpose of this examination would be to consider whether such delegated legislation or any part of it could fairly be said to have exceeded the authority to make such legislation which had been conferred by the particular section of the Act under which it purported to have been made. The Senate or Joint Select Committee would have no power to veto or amend any delegated legislation that it regarded as being *ultra vires*. Its functions would be limited to that of calling the attention of the House to the excess of authority, and it would be for the House thereafter to take such action as it regarded as being appropriate.

The Committee remark that this would be a check upon any excessive use of departmental authority and serve to reassure the public as to the need for such regulations and as to their being fairly within the intentions of the Legislature.

The Committee observe that in this submission:

We are recommending a type of work that would call for the services of highly-qualified men and women, and we think that in so doing we are adopting the best-known method of securing a second Chamber that would command the respect of Parliament and of the public.[30]

In Section 9 of their Report (*see below*) the Committee deal in much detail with the subject of Joint Select Committees.

Conclusion to Section 7: Powers, Duties and Functions of a Second Chamber

These are summarised[31] by the Committee as follows:

7. The powers, duties and functions of the Senate should be as follow:

(*a*) All Bills adopted by the House of Representatives will be sent up to, and dealt with by, the Senate in the same way as that which was followed

prior to 1951 when the bi-cameral system was in operation. The Senate would have authority to propose amendments to any Bill and to confer in the usual way with the House of Representatives with a view to having such amendments agreed to. It should be empowered to hold up a Bill for a period of two months, but no longer, and if at the expiration of that time the two Houses shall have failed to reach agreement, the decision of the House of Representatives—in its original form, or with such amendments as may have been agreed to—must prevail; and the Bill, with such agreed amendments, if any, must then be formally adopted by the Senate for submission to the Governor-General. In other words, the Senate may delay a given measure for such a length of time as may be needed for the due and adequate expression of public opinion, but it shall not in any case have a power of absolute veto in respect of any resolution or measure sent up from the House of Representatives.

(*b*) It should be competent for any member of the Senate to initiate a Bill in the normal way, and such Bill should be dealt with in the manner applicable to legislation generally.

(*c*) The power of the Senate with respect to the handling of money Bills should be the same as were possessed by the Legislative Council prior to 1951.*

Section 8: Regulation of Proceedings of Senate

The Committee remark that the Senate will, of course, have full control over its own proceedings and draw up its own Standing Orders for the management of its Business. The Senate will also have control of the recording and reporting of its discussions.[32]

Section 9: The Joint Select Committees

In further consideration of this subject, the Committee offer the example that if the Senate is called upon to deal with a local Bill, or a Petition, or to revise a public Bill, there would come a point at which the Senate would have to forward its report to the House. Should the Senate work in complete separation from the House there would be no members in the Popular Chamber who would be fully conversant with the facts and opinions upon which the Senate had based its findings, which would put the House at a considerable disadvantage and destroy the chances of securing good results. The following proposals are made by the Committee:

* *See* JOURNAL, Vol. X, 123. In response to my inquiry, the Clerk of the House of Representatives said:

"So far as the financial powers of the old Legislative Council were concerned, they were originally the same as those that were conferred on the Lower House. Section 242 of our Legislature Act, 1908, (which repealed the Parliamentary Privileges Act of 1865) conferred on both Houses the same powers as were then possessed by the House of Commons in England as at January 1, 1865. This soon led to conflict between the two Houses, and it was necessary from time to time to refer cases for opinion to the law officers of the Crown in England. The position became more or less stabilised about 1870 when the Council recognised the predominance of the Lower House in matters financial.

I think you can sum up the position by saying that while the Legislative Council had power to reject a money bill or any other bill, it had no power either to initiate money bills or to amend money bills originating in the Lower House. Its powers in regard to public monies, taxation, etc., were negligible".—[O. C.].

When the Senate is asked to deal with certain types of work—Local Bills, Petitions, Statutes Revision, and delegated legislation—it should work by and through Joint Select Committees constituted in the manner set out below:

1. In three of those cases to which we have just referred we are of opinion that the number of members on each such Joint Committee should be nine; in the case of Statutes Revision, however, we would propose that the Joint Select Committee should have ten members.
2. Of the nine members, six should be chosen from the Senate and three from the House of Representatives; for Statutes Revision, five members should come from each House.
3. In the selection of the three members from the House the Government of the day would appoint two and the Opposition would select one; and it should be a rule that when the Committees were being set up the Government would appoint one of its two members to be the Chairman. The reason for this suggestion is that, as the report of the Joint Committee will have to be presented to the House, it is essential that it should be presented by the Chairman and it is equally essential that he should be a member of the House. When the report comes before the House there would be three members of that body who would have sat on the Committee, and all three would be in a position to give the House such information as it might require to enable it to reach its own conclusions on the question dealt with in the report.
4. The findings of all Joint Select Committees should, when ready, be reported direct to the House in exactly the same way as is now followed by Special Select Committees of the House of Representatives.

The advantages that seem to us to flow from these proposals appear to be as follow:

(1) At present the House must supply ten of its members for each of its Select Committees; under our plan it would be called upon to supply only three. This would mean a great saving in the time of members, and it would mean, too, that a member would rarely be called upon for service on more than one Select Committee.

(2) In view of the fact that the Senate as such would not have to sit for such long hours and on so many days as is the case with members of the House, it could be expected that the work of Senators on such Committees would be very thorough and very well done. This would be of great benefit to the House and to the country.

(3) As the Senate would have twice as many members as the House on three of the Joint Select Committees, it would follow that the former body should be able to exercise a useful influence upon the proceedings in the House.

We are of opinion that the task of Statutes Revision should be handled in a slightly different way because of the special nature of the work and because of the way in which this function is regarded by Members of the Popular Chamber. In this case, therefore, we recommend:

(1) That the work of Statutes Revision be dealt with by a Joint Select Committee consisting of ten members.

(2) Of these ten members, five shall be chosen from the Senate and five from the House of Representatives.

(3) It should be a rule that the Chairman will be appointed by the Government, that three of the five House members shall be drawn from the ranks of the Government, and two from those of the Opposition.

(4) The procedure to be followed by this Joint Committee should be the same as that outlined above for the other Joint Select Committees.

Conclusions to Section 9

These are summarised by the Committee as follows:

(*d*) The Senate, acting by and through Joint Select Committees appointed in the manner hereinafter set forth, shall:

(1) Deal with all matters at present entrusted to the Statutes Revision Committee of the House of Representatives.

(2) The appropriate Joint Select Committee shall perform all the functions now performed by the Public Petitions Committees and by the Local Bills Committee of the said House of Representatives.

(3) Examine all delegated legislation such as Statutory Regulations and Orders in Council after their presentation to the House of Representatives with a view to the calling of the attention of that House to the fact, if such be the case, that such delegated legislation, or any part of it, has exceeded the limits prescribed for it in the Act or Acts which authorised the drawing up of such regulations or Orders in Council.

Appendix A

In this Appendix, which is headed, " How Constitutions can be created ", the Committee state that in their view there are only 3 ways in which a Constitution can be devised for a people and their Government, namely:

(i) A constitution may be imposed upon a subordinate body by a sovereign or superior Legislature, *e.g.*, What the British Parliament did for New Zealand in the 1852 Constitution; by the New Zealand Constitution Act, 1947.[33]

(ii) By the consent of those bound by it by contract alterable only in the manner agreed upon by the constituent members, *e.g.*, U.S.A. and Australia.

(iii) By a unitary Legislature, *e.g.*, New Zealand, but which could not bind its successors.

The suggestion to the Committee in the course of their inquiry that New Zealand could go back to the division into Provinces, and introduce a Federal system, was considered impracticable.

Appendix B

In this Appendix the question is asked: " Can we have a written or more or less rigid Constitution ?" and deals at some length with the value of " entrenched " provisions.

The Committee observe that it might be declared that no proposal for the abolition of the New Zealand second Chamber should have effect unless approved through the electors by referendum. The case of New South Wales by the Constitution (Legislative Council) Amendment Act, 1929, was then quoted.

The Committee consider, if a Chamber of the kind recommended by them is approved and legislation introduced to give effect to the proposal, that legislation should contain a referendum clause similar to the one discussed in their Report.

The Committee also observe that this second Chamber could be

protected by "entrenchment" but in view of the sovereignty of the New Zealand Parliament would the Courts of New Zealand reach the same conclusion as the judges of the Courts in South Africa ?[34]

In their full consideration of the subject, the Committee remark that "Sovereign Parliaments do not readily surrender big or little portions of their sovereignty".

The strong view of the Committee, therefore, is that if the people of New Zealand desire a second Chamber it should take the form the Committee have proposed for it;

it should have a real power to delay, but not to veto or defeat legislation, and its continuity, its permanence, indeed its future as a part of our machinery of government, should be secured and guaranteed against easy amendment or abrogation by some kind of entrenched provisions similar to those which have been tried in New South Wales and in South Africa.[35] We regard this as a most important part of our recommendations.

Appendix C

This Appendix deals with "the Question of the Veto". Any suggestion that a second Chamber in New Zealand should have an unlimited power to block or veto the Legislative or other proposals of the Popular Assembly the Committee consider would be intolerable.

It is here further observed by the Committee that:

Our Dominion is no longer a dependency of an Imperial State; and it is not a party to any kind of federal system; it is a unitary, self-governing, autonomous, fully sovereign State; and those words must have a very real meaning for those who are charged with the task of proposing a second Chamber that could function satisfactorily in such conditions. In addition to all this, it has to be borne in mind that our country has already had its first taste of uni-cameralism. After having done away with its second Chamber, will it lightly put another with a power to veto in its place? Is it reasonable for us to suppose that it would? Could we imagine that a Government which had enjoyed the freedom of action of a single-chamber system would be ready to re-establish a second Chamber which could restrict that freedom and which could wholly or in part frustrate its actions or nullify its decisions? We may feel that a single-chamber Parliament ought to be restricted in some way; it may occur to us that Government by a single Chamber means, under modern conditions, single-party government. Some may see in this the opening-up of an easy pathway towards political dictatorship. Such opinions cannot and should not be lightly disregarded or brushed aside. The danger is there, and nothing is to be gained in attempting to ignore it. The risks are not great so long as political parties are prepared to acknowledge their duties to the people and so long as they are willing to give proper heed to public opinion; but Constitutions are not much needed by those whose aim is to observe the law. It can be argued that our own Parliament, as at present constituted, would not be likely to abuse its powers, but can we say with confidence that we can guarantee the continuance of such an attitude towards political responsibility? Is it safe for us to entrust the future to a system that would be entirely lacking in the machinery of constitutional restraint?

If a power of veto, whether desirable or not, is for practical purposes unattainable, the same cannot be said about the provision of a reasonable power of delay.[36]

Appendix D

This gives a brief summary of salient events in the history of the Legislative Council.

Debate in the House of Representatives

On August 5, 1952,[37] the Hon. R. M. Algie (Minister of Education) and the House of Representatives Chairman of the Constitutional Reform Committee moved:

That the report of the Constitutional Reform Committee (Parliamentary Paper 1–18) be referred to the Government for consideration.

In the course of his speech Mr. Algie said that if history taught them any lesson at all, it showed completely and conclusively that a written Constitution and a second Chamber of the right kind are fundamental necessities in the machinery of democratic Government. Throughout the ages the dominant aim has been to transfer political power into the hands of the people themselves.

Successive generations of men have seen that their objective could be achieved only if that political power could be centred in an independent popular Assembly, freely elected by secret ballot based on universal adult suffrage. Never at any time had the acknowledged leaders of political thought agreed that the power of the people in the elected Chamber should be absolute.

On the contrary, they had consistently contended that the final word must always rest with the people themselves and not with their elected representatives.

They have clung stubbornly to written Constitutions or to second Chambers, or perhaps even to both, as the only practical and effective way of protecting the people against excess or abuse of political power by their elected representatives.

Quoting the case of the single Chamber of the State of Queensland in the Australian Federation, Mr. Algie observed that if the people of New Zealand should ever find themselves in a similar position, there was no law court which could test the constitutional validity of any statute. There was no law court in New Zealand to which a citizen could appeal for the protection of his constitutional rights. In the constitutional field the position was unique. The New Zealand Parliament was quite unfettered by any kind of written Constitution whatsoever, against any legislation that citizens might regard as unconstitutional. Their single Chamber could make or unmake any law it liked without let or hindrance from anybody.[38]

A single Chamber system, such as theirs, had worked quite well in the hands of those who could play the game, but could it be guaranteed that there would always be men ready and willing to observe the law? If history was any guide, democracy in any of its manifestations must at times face an attack by dictatorial powers. A single Chamber system " can be " a smooth, broad and

open roadway upon which evil-minded men could travel easily and quickly into the realms of totalitarianism and dictatorship.

The Report they had laid before Parliament was an expression of their sincere, honest and determined desire to do what they could to see that evil-minded men did not get that opportunity in New Zealand.[39]

The Deputy Leader of the Opposition (the Hon. C. T. Skinner) felt that because of the steps taken in 1950 by the Government to abolish the Legislative Council the Opposition was quite justified in viewing with grave suspicion any proposals of the Government to replace that body. The House had been told that there were some 80 measures to be considered this Session. The Opposition proposed to take no further part in the debate, first, because the Prime Minister had undertaken that no legislation on this subject would be introduced until the electors had been consulted and voted upon it; secondly, because it was pointless to discuss the matter this Session as no legislation could be brought down and, thirdly, because it was a deliberate waste of the time of the House.[39]

Mr. D. M. Rae (Parnell) said that although it looked as if the Opposition was not going to appreciate the Report, he had no doubt that other people would. The Report made good the promise of the Prime Minister that an honest endeavour had been made to probe this to find, if possible, a reasonable alternative to the former Legislative Council. The hon. member considered it regrettable—and after hearing the Deputy Leader of the Opposition speak, still more regrettable—that the Opposition failed to take part in the Select Committee set up to investigate this important problem.[40]

A good number of those who gave evidence before the Committee and some of their members too, had the fear, which was widely held, that it was absolutely necessary to establish some kind of unassailable authority in the Upper House to prevent dangerous legislation.[41]

Mr. T. L. Hayman (Oamaru) believed that he voiced the opinion of thousands of people when he said that he was disappointed at the refusal of the Opposition to take part in the Committee.

Mr. W. B. Tennent (Palmerston North) said that the plain fact was that New Zealand could not pass any legislation whatever which could not be repealed by any succeeding Government. The best that could be done was to provide certain checks and balances.[42] The Joint Committees suggested in the Report would reduce the number of Committees and improve the standard of Committee work. They would have a better type of men encouraged to go into the Upper House.[43] The hon. member said that the scheme the Committee had put forward was a good alternative. He had yet to find the man who could produce a better.

Mr. E. H. Halstead (Tamaki) observed that the marked silence of the Opposition in the debate was significant. There were men in

the Opposition with long and varied experience who had been in Parliament a long time. The only speaker they had heard was the Deputy Leader of the Opposition.[44]

Other functions of an Upper House were to allow for full and free discussion on important questions such as foreign policy at a time when the Lower House had not sufficient time to devote to such matters, to give opportunity to discuss topics that may have a long-term bearing on the well-being of the nation when the Lower House was busy with the immediate problems of government.[45]

(*When the debate had continued for a little over 2 hours the Closure was moved, but not accepted by Mr. Speaker, who did not think that the question of infringement of the rights of the minority (vide S.O. 197) had arisen at this stage because the minority—the Opposition—had withdrawn from the debate.*)

Mr. Hanan (Invercargill) remarked that it may well be that at the present time there was no widespread desire on the part of a great number of the people that this Government introduce legislation to create an Upper House as suggested in the Report, but that was probably due, in a large measure, to the great unpopularity of the late and unlamented Legislative Council. He was convinced that the suggested Senate would be infinitely superior.[46]

The Hon. W. A. Bodkin (Minister of Internal Affairs) in closing the debate stated that the Report indicated an honest endeavour to find an alternative in fulfilment of the promise made by the Prime Minister in his undertaking, and referred to by the Deputy Leader of the Opposition, but, unfortunately, he quoted only half the undertaking given on that occasion. Hon. members would recall that that undertaking was given by the Prime Minister in this Chamber to the then Leader of the Opposition, the late Mr. Fraser. The late Mr. Fraser and members of the Labour Party Opposition fought to the last ditch in 1947 and 1948 to retain the second Chamber, and when the present Government introduced the Abolition Bill, the then Leader of the Opposition claimed that that was revolutionary and asked of the Prime Minister an assurance that at least some undertaking would be made to find a satisfactory alternative. The Prime Minister gave that undertaking that he would endeavour to do so, but that no legislation would be introduced until the matter had first been referred to a referendum of the people.[47]

"Where do you find the demand coming from for an Upper House?" asked the Minister, and continuing said:

> I say that it emanates from those people in the community who are afraid of what they call the extreme "left wing" section of the community. They are afraid that a Government pledged to adopt a totalitarian philosophy will some day occupy the Treasury benches and enact any laws that it thinks fit. . . . I would refer hon'ble members to a certain pamphlet that was issued by the one-time Minister of Labour in the Labour Government, the present member for Riccarton, in connection with the trouble on the waterfront.

He pointed out to his own people that there were in the ranks of the Labour movement Communists and fellow travellers determined to wreck constitutional government.

On the evidence of history, we must realise, whether we like it or not, that in the future every country on earth is face to face with the threat of a totalitarian Government. It is necessary, then, to examine the position and to recognise that the strength of the British way of life or democracy as we understand it is dependent first upon the sovereignty of Parliament and secondly upon the rule of law. Parliament can consist of two Chambers. There is nothing unconstitutional in that.

Before the 1949 election we wrote into our platform and went to the country pledged to abolish the Upper House as " at present constituted ". We were returned. The Prime Minister fulfilled that pledge in every way. We set up a Committee, and the same party that was prepared to appoint representatives to sit on the Committee set up on the same subject in 1947, boycotted it in 1950. Members opposite have not even raised their voices in this debate. Why? Because they have an eye on those extreme elements in their party and are anxious not to offend them.

Question put and agreed to.

[1] Vols. X, 52; XVI, 161; XVIII, 84; XIX, 200. [2] 1950 *H.R.J.*, 193.
[3] *Ibid.*, 458. [4] 1951, *Ibid.*, 54, 40, 239; 1952, *H.R. Hans.*, 148.
[5] 1952, *N.Z. Hans.*, 296. [6] *Parliamentary Paper, No.* 1-18 (Government Printer, Wellington, 1952, 1s.). [7] *Ibid.*, pp. 4-6. [8] Vol. XIX, 200.
[9] *Parliamentary Paper, No.* 1-18, p. 10. [10] *Ibid.*, p. 13. [11] *Ibid.*, pp. 14, 15.
[12] *Ibid.*, p. 16. [13] *Ibid.*, pp. 17, 19. [14] *Ibid.*, p. 11. [15] *Ibid.*, p. 11.
[16] *Ibid.*, p. 22. [17] *Ibid.*, p. 23; and JOURNAL, Vol. XX, 147.
[18] *Parliamentary Paper, No.* 1-18, pp. 11, 21. [19] *Ibid.*, p. 24. [20] *Ibid.*, p. 11.
[21] *Ibid.*, p. 28. [22] *Ibid.*, p. 30. [23] *Ibid.*, pp. 30, 31. [24] *Ibid.*, p. 11.
[25] *Ibid.*, p. 32. [26] *Ibid.*, pp. 32, 33. [27] *Ibid.*, p. 33. [28] *Ibid.*, p. 33.
[29] *Ibid.*, p. 34. [30] *Ibid.*, p. 35. [31] *Ibid.*, p. 12. [32] *Ibid.*, pp. 12, 35.
[33] *See* JOURNAL, Vol. XIX, 200. [34] *Ibid.*, XX, 149.
[35] *Parliamentary Paper No.* 1-18, pp. 39-45. [36] *Ibid.*, p. 46.
[37] 1952, *N.Z. Hans.*, 725. [38] *Ibid.*, 726. [39] *Ibid.*, 728. [40] *Ibid.*, 729.
[41] *Ibid.*, 731. [42] *Ibid.*, 734. [43] *Ibid.*, 736. [44] *Ibid.*, 736.
[45] *Ibid.*, 738. [46] *Ibid.*, 743. [47] *Ibid.*, 743.

XII. THE CONSTITUTIONAL CRISIS IN SOUTH AFRICA[1]

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The Vote Case

In *Harris and Others* v. *Minister of the Interior* (the *Vote Case*)* the South African Appeal Court was asked to adjudicate upon the validity of the Separate Representation of Voters Act (No. 46 of 1951), which, having been passed by the Senate and the House of Assembly sitting separately, received the Governor-General's

* 1952 (2) S.A. 428 (A.D.); 1952, 1 T.L.R. 1245. The Appeal Court's judgment in the *Vote Case* was delivered in March, 1952. Later in the year, the same court declared void the High Court of Parliament Act (No. 35 of 1952). The latter case is reported *sub nom. Minister of the Interior* v. *Harris & Others*, 1952 (4) S.A. 769 (A.D.). To avoid confusion between these cases, and for the sake of simplicity, it is convenient to call the first the *Vote Case*, and the second, the *High Court Case*.

Assent, and was thereafter promulgated and enrolled among the statutes of the Union.[2] The "Act" destroyed the common voters' roll for Europeans and non-Europeans,[3] and created two mutually exclusive rolls, one for Europeans, the other for non-Europeans. The latter were henceforth to elect 4 representatives to the House of Assembly, and were to be represented in the Senate by a Government nominee.*

The respondents put up 2 lines of defence. The first was that the removal of non-Europeans from the common roll to a special communal one, did not constitute a "disqualification" within the meaning of Section 35 of the South Africa Act. The Court showed that this argument was untenable.[4] Secondly, it was contended that even if the Act did disqualify voters, the entrenched sections were no longer binding because of the Statute of Westminster, and that the Court should follow its earlier decision in *Ndlwana* v. *the Minister of the Interior*.† This raised, in the words of Centlivres, C.J., a constitutional question of the very greatest importance, *viz.*, whether what are known as the entrenched clauses of the South Africa Act are, in view of the passing of the Statute of Westminster, still entrenched or whether Parliament sitting bi-camerally is free by a bare majority in each House to amend any section of the Constitution even though such section may originally have been entrenched.[5]

At the outset their Lordships had to determine the correct method of approach. Counsel for the Minister urged the Court to treat the issue as depending for its solution on a true view of the British doctrine of Parliamentary sovereignty. He argued that, with certain exceptions, the Parliament of the Union had been created as an exact replica of the United Kingdom Parliament.[6] The exceptions were that between 1910 and 1931 there existed fetters upon the legislative power of the Union Parliament—among them, the requirements of the entrenched sections.[7] But with the passing of the Statute of Westminster, all fetters fell away and the Union Parliament took the place of the Parliament of the United Kingdom as the sovereign legislature of the Union.[8] It followed, the argument continued, that the relation between the Union Parliament and the courts became identical with that between the United Kingdom Parliament and the British courts.[9] Having thus sought to introduce the concept of British Parliamentary sovereignty,‡

* They were also to elect 2 representatives to the Cape Provincial Council.

† 1937 A.D. 229. *See* JOURNAL, Vol. VI, p. 216. In *Ndlwana's Case*, the requirements of the entrenched sections were treated on the same footing as the Rules and Orders relating to the internal proceedings of the Houses, and so not subject to the jurisdiction of the courts.

‡ It was also argued that English constitutional law should be applied. There can be no doubt that, *in the absence of modification by statute*, English common law governs many constitutional questions in South Africa, *e.g.*, in regard to the prerogative—*see*, *Sachs* v. *Dönges*, 1950 (2) S.A. 265 (A.D.) at 288, 309, and generally, *Ruding* v. *Smith* (1821), 2 Hagg. Cons. 371 at 382. The issue in the *Vote Case*, however, had to be decided by reference to the specific terms *of the relevant statutes*. Generalities about "the approach of the British constitutional law" were not helpful.

counsel contended that it " supplied all the answers ". No British court could question the validity of Act 46 of 1951 had it been passed by the United Kingdom Parliament; therefore no South African court should do so.

The Court was not drawn into deciding the concrete case before it by deduction from any preconceived theory of sovereignty. The correct approach was to ascertain what the law was before the Statute of Westminster, and then to inquire whether that Statute, or any other event, had brought about any relevant change.[10] And here one may observe that if an inquiry along these lines involved a finding, that one could not properly attach the label " sovereign " to the Union Parliament, that would be a *result* of determining the real issue; the abstract question of sovereignty was not itself in issue.[11]

Centlivres, C.J., who delivered the unanimous judgment of the Court,[12] began by pointing out that if Act No. 46 of 1951 had been passed bicamerally before the Statute of Westminster, it would have been invalid. This was clear, he said, " from the reasons given in *R.* v. *Ndobe.** That decision was not questioned on behalf of the respondents and there is no reason to doubt its soundness ".[13] His Lordship emphasised that in declaring such a statute invalid,

* 1930 (A.D.) 484. The efficacy of the entrenched sections first arose for decision in this case.

The appellant in *Ndobe's Case* challenged the validity of Act No. 38 of 1927, which had been passed bicamerally, on the ground that it fell within the scope of Section 35 of the Constitution, and should therefore have been passed by a two-thirds majority at a joint sitting.

Counsel for the Crown argued that the Act did not fall within Section 35, and that even if it did, the Court had no jurisdiction to inquire whether the provisions of the Constitution had been duly observed. In support of the latter contention, he submitted that the entrenched sections should be treated on the same footing as the Rules of the House with respect to the order and conduct of their own internal proceedings. " The safeguard ", he went on to submit, " was the conscience of Parliament and the Royal Instructions to the Governor-General ", and not the courts. Finally, he cited authority in favour of the conclusiveness of the Parliament roll in England, and pointed to Section 67 of the Constitution, dealing with the effect of the enrolment of Acts at Bloemfontein.

The Appellate Division rejected these contentions and held:

(*a*) That a distinction must be drawn between (i) Rules governing the internal proceedings of the Houses, and (ii) the requirements of the entrenched sections. Courts of law have no jurisdiction to inquire into the due observance of the former, but they have in regard to the latter.

(*b*) If Act No. 38 of 1927 fell within the ambit of Section 35, the provisions of that section should have been observed.

(*c*) On the other hand, if the Act did not fall within Section 35, then the only way in which it could have been validly passed was by Parliament functioning as a bicameral legislature.

(*d*) Upon a proper construction, the Act did not fall within Section 35.

(*e*) The courts must assume, *until the contrary appears*, that an Act of Parliament has been validly passed. Act No. 38 of 1927 was an Act which on the face of it dealt with matters outside Section 35, " and must therefore be assumed to have been validly passed by Parliament *as usually constituted*."

Subsequently, in *Ndlwana's Case* (1937), Stratford, A.C.J., stated that with the passing of the Statute of Westminster, *Ndobe's Case* lost its relevance as a precedent. But *see below*, pp. 100-1.

the Court would be " exercising a duty which it owes to persons whose rights are entrenched . . .; its duty is simply to declare and apply the law and it would be inaccurate to say that the Court in discharging that duty is controlling the Legislature ".*

One event, and only one, was relied on by counsel for the Minister as having changed the law—the passing of the Statute of Westminster. During the course of argument he " correctly stated that the Status Act carried the matter no further. If the Statute of Westminster did not have the effect of repealing or modifying the entrenched clauses of the South Africa Act, then those provisions remained intact after the Statute was passed and the Union Parliament could not by means of an Act, like the Status Act, passed bicamerally, repeal or modify those entrenched clauses ".†

The Court then proceeded to clear the ground for its analysis of the Statute of Westminster. It held that, in order to understand the reasons for passing a constitutional measure like the Statute of Westminster, it was permissible to refer to the events which led to its enactment. " These events ", said Centlivres, C.J., " may throw a light on the meaning ".[14] And he went on to refer to the well-established rule in *Heydon's case*[15] that the office of judges " is always to make such construction as shall suppress the mischief and advance the remedy ". The events which led to the passing of the Statute of Westminster‡ showed that the " mischiefs " which it aimed at ending were twofold. First, the supremacy of the United Kingdom Parliament,[16] which prevented the Parliaments of the Dominions from legislating repugnantly to British statutes,[17] and enabled the British Parliament (in theory at any rate) to legislate for the Dominions.§ Secondly, it was considered that the Dominion Parliaments had no power to make laws having extra-territorial operation.[18] As will be shown presently, the Statute of Westminster removed these " mischiefs ", but did not in any way modify the entrenched sections.‖

The Court was now in a position to consider the grounds which had been relied on by counsel, and by many text-writers, to support the view that the Statute of Westminster terminated the efficacy of the entrenched sections. These grounds fall under three heads.

* At 456. " It is hardly necessary to add ", said Centlivres, C.J., " that courts of law are not concerned with the question whether an Act of Parliament is reasonable or unreasonable, politic or impolitic." *See also Swart, N.O., and Nicol, N.O.* v. *de Kock and Garner*, 1951 (3) S.A. 589 (A.D.) at 606; *R.* v. *McChlery*, 1912 (A.D.) 199 at 215-16, 220-1.

† At 566-7. Some reliance was placed on the fact that Act No. 28 of 1946 (Sec. 44 (3))—removing Indians in Natal from the voters' list—had been passed bicamerally. See 1952 (2) S.A. 428 (A.D.) at 472. This is irrelevant in law; further, it may be noted that Sec. 44 (3) of Act 28 of 1946 never came into operation and was eventually removed from the Statute Book by Act No. 47 of 1948 (Sec. 2).

‡ Namely, the Imperial Conferences of 1926 and 1930 and the Conference on the Operation of Dominion Legislation, 1929, together with the relevant Reports.

§ This power was never exercised in practice without the consent of the Dominion concerned.

‖ *See below*, p. 100.

1. The Repeal of the Colonial Laws Validity Act

According to a view which has been widely held, the efficacy of the entrenched sections depended entirely on the Colonial Laws Validity Act and so fell away when in 1931 that Act ceased to apply.* The argument based on that Act has been lucidly summarised by Professor K. C. Wheare:[19]

> The entrenched sections were binding before the passing of the Statute because they were contained in an Act of the United Kingdom Parliament which, according to the rules embodied in the Colonial Laws Validity Act, must prevail over any legislation repugnant to it. In particular, any amendment of the entrenched sections carried out by a procedure other than that laid down in section 152 would be a law repugnant to Section 152 and therefore by Section 2 of the Colonial Laws Validity Act, void. Such a law would infringe also Section 5 of the Colonial Laws Validity Act which provided that laws altering a constitution must have been " passed in such manner and form as may from time to time be required by an Act of Parliament. . . ." And it would be void on that count also. When the Colonial Laws Validity Act was repealed, it was argued, did not these safeguarding sections disappear?

Dealing with this, the Court held that

> a repeal or alteration of the South Africa Act enacted by an Act of the Union Parliament in accordance with the provisions of Section 152 would be repugnant to the provisions so repealed or altered. Those provisions are, it is true, contained in a British Act of Parliament, *viz.*, the South Africa Act, but that repugnancy is specifically authorised by that very British Act which is a later Act than the Colonial Laws Validity Act and must therefore in case of conflict override the earlier Act. Section 2 of the Colonial Laws Validity Act could therefore have no application to the repeal of the amendment of the South Africa Act.†

In regard to Section 5 of the Colonial Laws Validity Act, Centlivres, C.J., said:[20]

> The only part of Section 5 which was of any importance as far as the Union was concerned was the power given to the Union Parliament to bind a subsequent Union Parliament to follow a prescribed procedure in amending

* " It is the existence of the Colonial Laws Validity Act ", wrote Mr. Walter Pollak, Q.C., " which alone gives legal efficacy to the proviso contained in Sec. 152 of the South Africa Act. Once repeal the Colonial Laws Validity Act and the Union Parliament can, it is submitted, validly repeal or alter any of the entrenched clauses of the South Africa Act without observing the requirements of Sec. 152 ": 48 (1931) *South African Law Journal*, 269 at 282.

Mr. Pollak's article is still the best statement of this point of view.

† 1952 (2) S.A. 428 (A.D.) at 461. Professor Wheare, while agreeing with this conclusion, says: " Would it not be preferable to state the fact by asserting not that amendments of the South Africa Act duly passed were valid though repugnant, but that they were valid because not repugnant ? Surely an authorised amendment is not repugnant to the South Africa Act but consistent with it ?" *The Statute of Westminster and Dominion Status*, 5th ed., p. 341. And he pertinently adds: " What about amendments to the South Africa Act passed contrary to the provisions of sec. 152 ? "

It is submitted that the reason why the Colonial Laws Validity Act was not applicable to legislation passed otherwise than in conformity with Sec. 152, is that a question of repugnancy could not arise in such a case. As Professor Wheare so clearly states: " There is Sec. 152 which lays down the manner and form in which the Act may be altered. It governs the situation, and the Colonial Laws Validity Act need not be invoked. That was the position before the passing of the Statute of Westminster. Section 152 was there before and it was there afterwards ": *op. cit.*, p. 341.

For fuller discussion *see* my essay on *Parliamentary Sovereignty, etc.*, pp. 2-20.

specified provisions of the Union Constitution. . . .[21] The rest of Section 5 was unnecessary as far as the Union was concerned, as the South Africa Act makes full provisions for the matters specified in that section.

In other words, Section 5 was dealt with in much the same way as Section 2: the South Africa Act was the relevant law governing constitutional amendment in the Union.

2. The Provisions of Section 2 (2)

Section 2 (2) of the Statute of Westminster provides:

No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

The argument based on this section, and more particularly on the concluding words, was that new powers of *constitutional amendment* had been conferred on the Union Parliament. The argument was developed in two ways. First, it was maintained that the word "Parliament" designates an exclusively bicameral body,* and it was on this bicameral Parliament that power to repeal existing or future British Acts had been conferred.[22] The South Africa Act, the argument continued, is an existing British Act, and therefore all of its provisions could now be repealed by Parliament functioning bicamerally.[23] Secondly, it was submitted that the Statute of Westminster "gave Parliament the option of sitting either bicamerally or unicamerally, whether the subject-matter of the legislation falls within or without the entrenched section".[24] And these contentions were said to receive strong support from the decision of the Privy Council in *Moore* v. *The Attorney-General for the Irish Free State*.[25]

This raised the crucial question, what is meant by "Parliament" in the phrase "the Parliament of a Dominion", contained in Section 2 of the Statute of Wesfminster?[26] It is here that we get to the very heart of the inquiry.

* At 442. Counsel for the Minister pointed out that in each of the sections of the Constitution which provides for a joint sitting (*viz.*, 35, 63 and 152) there is a provision that a Bill passed at a joint sitting *shall be taken to have been duly passed by both Houses of Parliament*. He argued that this deeming provision was a recognition that the Union Parliament is a bicameral legislature. For the contrary view, *see* 15 (1952) *Modern Law Review*, p. 287, where some of the reasons for including the deeming provisions are set out. Note that the wording is not "shall be taken to be passed by Parliament" but by both Houses of Parliament. The essential point is that in answering the question what is Parliament, regard must be had to the Constitution as a whole. Sections 35, 63 and 152, which contain the deeming provisions, are part of the definition of Parliament. Had the Constitution required a two-thirds majority in each House sitting separately, could it have been seriously argued that the Statute of Westminster introduced the bare majority principle? *See also* below, p. 97, note (†).

The essence of the Court's decision on this question is set forth in the following passages:

> The words " Parliament of a Dominion " in the Statute of Westminster must be read, in relation to the Union, in the light of the South Africa Act. . . .[27] It is [the South Africa Act] and not the Statute of Westminster which prescribes the manner in which the constituent elements of Parliament must function for the purpose of passing legislation.[28] When it [the Statute of Westminster] refers to a law made by a Dominion, such law means in relation to South Africa a law made by the Union Parliament functioning either bicamerally or unicamerally *in accordance with the requirements of the South Africa Act.*[29]

The Court pointed out that the reference to " Parliament " in the Statute of Westminster

> clearly was not only to Parliament sitting bicamerally, for it would be absurd to suggest that a law made by Parliament in terms of section 63 of the South Africa Act would still be subject to the provisions of the Colonial Laws Validity Act.[30]

Section 63, moreover, was the answer to the contention that the Statute of Westminster gave the Union Parliament the option of amending the South Africa Act in accordance with any procedure it might choose to adopt. Thus, as Centlivres, C.J., observed:

> If this contention were sound, it would follow that the Statute of Westminster has, by mere implication,* effected a radical alteration of our Constitution. It would mean that not only could Parliament ignore the constitutional safeguards solemnly enacted in the South Africa Act, but that it could also ignore the provisions of Section 63, which provides for a joint sitting of the two Houses where there is a disagreement between the two Houses. Except in the case of Bills dealing with the appropriation of moneys for the public service, such a joint sitting cannot be convened during the first session in which the Senate rejects the Bill, but if Mr. Beyers' contention were correct, Parliament could take a short cut by means of a joint session convened for that purpose, without the Senate ever being asked to consider the Bill. There is, in my opinion, no substance in this contention.[31]

In other words, not only did one do no violence to language in regarding " Parliament " as meaning Parliament sitting either bicamerally or unicamerally in accordance with the requirements of the South Africa Act, but one thereby avoided the anomalies implicit in any other view.† The Court's interpretation was also supported

* As pointed out by Centlivres, C.J., " a repeal by implication of an earlier statute by a later one is neither presumed nor favoured. It is only when the language used in the subsequent measure is so manifestly inconsistent with that employed in the former legislation that there is a repugnance and contradiction, so that the one conflicts with the other, that we are justified in coming to the conclusion that the earlier Act has been repealed by the later one "; *New Modderfontein Gold Mining Co.* v. *Transvaal Provincial Administration*, 1919 A.D. 367, at 400, per Kotzé, J.

† It has been contended that it is anomalous that the entrenched sections should be left intact, whereas if they had contained an *absolute limitation* upon Parliament's power to amend the Constitution, the limitation would have been repealed by the Statute of Westminster. This contention is unsound. Thus (*a*) it erroneously assumes that the Union Parliament is an exclusively bicameral legislature. This is not the case: the entrenched sections are part of the definition of a Parliament which functions in different ways for different purposes. See the quotation from Professor Wheare's *The Statute of Westminster and Dominion Status*, 5th ed., note 37

by *R.* v. *Ndobe*, where de Villiers, C.J., " quite naturally "—as Centlivres, C.J., pointed out[32]—" referred to ' Parliament as usually constituted ' in contradistinction to Parliament ' as constituted under Sub-section 1 of Section 35 ' ".*

Once it was clear that " Parliament means Parliament functioning in accordance with the South Africa Act ",[33] Section 2 of the Statute of Westminster carried the matter no further. The Statute admittedly gave the Union Parliament powers of repealing British Acts which it did not possess before,[34] but this did not involve new powers of repeal *in regard to the South Africa Act* because Parliament already possessed full power in that respect. It was true, as the Chief Justice pointed out, " that the Union Parliament *sitting bicamerally* did not have full power to do so and that the entrenched sections could only be amended by Parliament sitting unicamerally with a two-thirds majority ".[35] But functioning in terms of the South Africa Act, Parliament did have that power.

What emerges so clearly from the Court's method of dealing with this aspect of the inquiry, is the necessity to guard against the fallacy that a Dominion Parliament must necessarily be a replica of the British Parliament, despite the fact that all the Dominion Parliaments have constitutions which define the manner in which they must function as legislative bodies.† As van den Heever, J.A., tellingly observed in the *High Court Case*,

> only British bias could prompt the thought that since such a power [*i.e.*, to make all laws bicamerally by a bare majority] resides in the legislature in Britain, our Parliament *as ordinarily constituted* must necessarily have it too.[36]

Professor Wheare brings out the point unmistakably when he says:[37]

> A fundamental question has been steadily ignored, namely: What is the Parliament of the Union? It has been assumed that the Parliament of the Union is the three elements of Governor-General, Senate and House acting

below; *Parliamentary Sovereignty, etc.*, pp. 4 f.; the *Vote Case* at 464, note (†) below; the *High Court Case*, 1952 (4) S.A. 769 (A.D.) at 791; (*b*) it confuses provisions relating to the structure of the Legislature and its mode of law-making, with those defining its powers. But, as Sir Owen Dixon has pointed out, " a wide distinction . . . exists between the powers of legislation and the mode . . . of their exercise ": 51 (1935) *Law Quarterly Review*, p. 603. Had the South Africa Act provided that legislation on all subjects must be passed by a 60 *per cent.* majority, could it seriously have been argued that the effect of the passing of the Statute of Westminster would have been to introduce the bare majority principle, as in England ? (*c*) It ignores the fact that there is nothing to prevent the repeal of the entrenched sections by the Union Parliament, *duly functioning in terms of the South Africa Act*. See the *Vote Case*, at 463. It may, perhaps, be added that the suggestion also assumes the correctness of the " liberal view " of the Statute of Westminster, as to which *see Parliamentary Sovereignty, etc.*, pp. 22 f.

* In *Ndobe's Case*, 1930 A.D. 484, at 492-3, 495, de Villiers, C.J., also speaks of Section 35 as placing limits on the powers of Parliament. It is clear from the context, however, that he means limits on the powers of Parliament *as usually constituted*.

† " There is nothing in the Statute of Westminster which in any way suggests that a Dominion Parliament should be regarded as if it were in the same position as the British Parliament ": per Centlivres, C.J., in the *Vote Case*, at 464. *See also Parliamentary Sovereignty, etc.*, pp. 4 ff.

separately and that it was to such a Parliament and its Acts that the Colonial Laws Validity Act and the Statute of Westminster exclusively referred so far as the Union was concerned. This, it should be admitted, was an unwarranted assumption, ignoring as it did the provisions of the Constitution of the Union which created the law-making authority of the Union, and determined its structure and mode of legislating no less than its powers. *The procedure referred to in the entrenched sections was part of the definition of the Union Parliament and was not a limitation upon the powers of an exclusively bicameral Parliament.* The Colonial Laws Validity Act and the Statute of Westminster affected the powers of the Union Parliament but they did not affect its definition; they regulated the effect of an Act of the Union Parliament but they did not determine when it should be deemed to have passed an Act.

The case of *Moore* v. *The Attorney-General of the Irish Free State*[38] was distinguished by the Court on the ground that there had been an external fetter upon the legislative competence of the Irish Parliament which was inconsistent with the provisions of the Statute of Westminster.[39] It is submitted that even if the fetter imposed on the Irish Parliament should be regarded as an internal one, *Moore's Case* is still clearly distinguishable. The relevant statutory provisions in Ireland imposed a limitation upon the Irish Parliament's power of constitutional amendment, whereas the provisions of Section 152 of the South Africa Act are part of the definition of a Parliament having complete legal power of constitutional amendment.[40]

3. The Absence of a Saving Section

Reliance was also placed on the presence in the Statute of Westminster of saving sections for the constitutions of Canada, Australia and New Zealand, and their absence in regard to the Union. It was argued that the inference must be drawn that the Statute of Westminster intended to modify the provisions of the South African Constitution.

The answer to this contention (said Centlivres, C.J.), is that on the interpretation of the Statute of Westminster which I have given above, there was, in the case of the Union, no need to insert a saving clause in the Statute, however great the need may have been in the case of Canada, Australia and New Zealand. I do not consider it necessary to express any opinion as to the need of a saving clause in respect of those three countries, for saving clauses are sometimes inserted *ex majori cautela* in order to quiet any fear there might be that the language used by the legislature might be misconstrued.[41]

One may add that had it been necessary to explain the absence of a saving clause for the Union by showing an essential difference between Canada, Australia and New Zealand, on the one hand, and South Africa on the other, this could have been done. Indeed, after setting forth the reasons for the saving sections in regard to Canada, Australia and New Zealand, the Report of the Conference on the Operation of Dominion Legislation[42] specifically stated that similar considerations did not arise in connection with the Constitution of the Union of South Africa.

The Court accordingly came to the conclusion that the Statute of Westminster had not expressly or impliedly repealed or altered the entrenched sections of the South Africa Act.[43] It fully recognised that the Statute had enlarged the powers of the Union Parliament, *duly functioning in terms of the South Africa Act.* Thus, it removed all restrictions then existing upon the power of the Union Parliament to legislate repugnantly to British statutes.[44] Further, it removed any inability that might have existed to legislate with extra-territorial effect.[45] And, finally, it terminated the legislative supremacy of the British Parliament in South Africa.* But it did not change "the manner in which the constituent elements of Parliament must function for the purpose of passing legislation ".[46] Indeed, it would have been surprising if it had done so; for as the Chief Justice pointed out,[47] this would mean that the British Parliament had gone out of its way to upset the compact of Union in the teeth of a Resolution passed by both Houses of the Union Parliament.†

It was clear that the conclusion which the Court had reached conflicted with *Ndlwana's Case,* and this raised the question whether the Appellate Division is entitled to depart from one of its previous decisions. A full survey of the authorities showed that the Court was not irrevocably bound by the rule *stare decisis* if satisfied that its earlier pronouncement was wrong.[48] Although Centlivres, C.J., did not consider it necessary or desirable to give an exhaustive statement of the circumstances in which a court of ultimate resort should depart from one of its previous decisions, he instanced factors which in the past had been held sufficient to justify such a departure. Thus, there were cases in which the Privy Council had not followed an earlier decision, because relevant authorities had not been brought to its attention.[49] In *R.* v. *Faithfull and Gray,*[50] a previous decision was over-ruled because the relevant statute had not been examined, no authorities were quoted, and the point was not argued. And where no rights could be supposed to have arisen by reason of a previous decision, "a tribunal even of last resort ought to be slow to exclude fresh light which may be brought to bear upon the subject ".[51]

All these factors were present here. The Statute of Westminster had not been analysed in the earlier case.[52] Moreover, it was a fair

* At 467: "The only legislature which is competent to pass laws binding in the Union is the Union legislature. There is no other legislature in the world that can pass laws which are enforceable by courts of law in the Union ". For fuller discussion, *see* 15 (1952) *Modern Law Review,* pp. 294 ff.

† The resolution is as follows: "That on the understanding that the proposed legislation will in no way derogate from the entrenched provisions of the South Africa Act, Parliament, having taken cognisance of the draft clauses and recitals which it was proposed by the Imperial Conference of 1930 should be embodied in legislation to be introduced in the Parliament at Westminster, approves thereof and authorises the Government to take such steps as may be necessary with a view to the enactment by the Parliament of the United Kingdom of legislation on the lines set out in the Schedule annexed ".

inference that the Court had not heard argument for or against its main conclusion.[53] In the *Vote Case*, the Court was given a mass of material which was not before it in *Ndlwana's Case*.[54] Further, the decision in that case had not led to the accrual of rights or the incidence of duties on private individuals.[55] On the contrary, if correct, it enabled Parliament, acting bicamerally by a bare majority, "to deprive . . . individuals of rights which were solemnly safeguarded in the Constitution".[56] Finally, in *Ndlwana's Case*, Stratford, A.C.J., had made a categorical statement on a crucial point without giving any reasons, so that the Chief Justice was "not in the invidious position of preferring [his] own reasoning to that of [his] predecessors".[57] Bearing in mind all these special circumstances, the Court held that it was "bound to refuse to follow *Ndlwana's Case*".[58]

It remains to make a few brief observations on the line of reasoning adopted by the Court. Once it was clear that the Statute of Westminster had not expressly or impliedly repealed or modified the entrenched sections, it followed, said Centlivres, C.J.,

> that the principles enunciated in *R.* v. *Ndobe* are still sound law, *viz.*, that courts of law have the power to declare Act No. 46 of 1951 invalid on the ground that it was not passed in conformity with the provisions of Sections 35 and 152 of the South Africa Act.[59]

This conclusion does not depend on the fact that the South Africa Act was passed by the Imperial Parliament. As Professor Wheare points out:

> the Court's judgment makes it clear that the validity of the entrenched sections and their priority in determining what is an Act of Parliament in the Union, depend in no way upon their being part of a superior Imperial Act. *Their priority depends not upon origin but upon logic.*[60]

And, in a masterly passage, van den Heever, J.A., has stated:

> The fact that our constitution is the creature of the British Parliament seems to me a fortuitous circumstance which is quite irrelevant; so too is the fact that we have a written constitution. I would have been of the same opinion if it had been framed by a constituent assembly of the people, made by Solon or extracted from the laws of Hammurabi.[61]

Nor is the Court's judgment based on any particular theory of government. As van den Heever, J.A., emphasised:

> it seems to me immaterial whether one adheres to the mandatory theory of legislative power or any other. The fact remains that the South Africa Act is our constitution and apart from that constitution there are no organs of state and no powers.[62]

Professor Wheare is to the same effect:

> The efficacy of the provisions in the South Africa Act describing how Parliament is constituted and how it legislates for different purposes, follows from the nature of a constitution. . . . The judgment [in the *Vote Case*] . . . asserts the logical priority of a constitution over the institutions which it has created and whose nature and powers it describes and determines.[63]

The South Africa Act had created the Union Parliament, defined its structure and powers and prescribed the mode of their exercise. Its provisions were law before Westminster; they continued to be law thereafter. Before 1931, Parliament as ordinarily constituted could not have altered the Cape franchise: it cannot do so now. Trenchantly, and with crystal clarity, van der Heever, J.A., put this beyond doubt when he said:

> Neither the people nor any other constituent authority has conferred upon Parliament as ordinarily constituted the power to alter the Cape franchise. In fact such power has been expressly withheld. Parliament as ordinarily constituted has not as yet effectively and finally assumed such power in a revolution, nor has Parliament functioning unicamerally with the requisite majority conferred such power. There is no other conceivable source of such power; consequently it does not exist.[64]

The High Court Case

As soon as the Appeal Court's decision in the *Vote Case* was made known, the Government denounced it as an affront to the sovereign status of the Union and an impairment of the sovereignty of Parliament,[65] and stated that steps would be taken to remedy "the situation which has now arisen which is an intolerable one".[66] In terms of the High Court of Parliament Act (No. 35 of 1952) (which was passed bicamerally in the ordinary way), a tribunal called "The High Court of Parliament" was set up with power to review the correctness of any decision of the Appellate Division declaring invalid "an Act of Parliament";[67] the latter term was defined as any instrument which has at any time after the coming into operation of the Statute of Westminster been enrolled in terms of Section 67 of the South Africa Act, by virtue of the fact that it purports to be an Act of Parliament and which purports to be enacted by the King, the Senate and the House of Assembly.[68]

The High Court of Parliament consisted of all the Members of Parliament;[69] only a Minister of State could apply for the review of a decision of the Appellate Division;[70] such application would first be considered by a Judicial Committee, consisting of 10 members of the High Court;* thereafter the High Court, having considered the Report of the Judicial Committee, could "on any legal ground by resolution confirm, vary or set aside"[71] the decision of the Appellate Division. A decision of the High Court—by a majority vote[71]—was to "be final and binding".[71]

The "Judicial Committee" and the "High Court" assembled, and in a lengthy judgment purported to over-rule the decision in the *Vote Case*.† Meanwhile the successful parties in the *Vote Case* had applied to the Cape Provincial Division for an Order declaring

* Section 6. Four members were to constitute a quorum, and a decision by a majority of those present was to be a decision of the Committee.

† The Judicial Committee's judgment was given on August 14, 1952. Its recommendation that the Appeal Court's decision be set aside, was adopted by the High Court of Parliament on August 28, 1952.

the High Court of Parliament Act null and void. Their application was granted,* and the Government then took the matter on appeal to the Appellate Division.

Counsel for the Government contended that Parliament as ordinarily constituted had full power to reorganise the Judiciary, and that exercising that power, it had created a Court superior to the Appellate Division.[72] The Appellate Division held, however, that the Act constituting the High Court of Parliament was a nullity.[73]

Analysis of the reasons given by the learned Judges of Appeal† shows that the Court held:

(*a*) that the entrenched sections contain constitutional guarantees creating rights in individuals, the duty of the Courts, where the question arises in litigation, being to ensure that the guarantee is made effective, unless and until it is modified in terms of the Constitution.[74] The "testing right" (that is, the right of citizens to test in a Court of law the validity of legislation alleged to infringe the Constitution) is an essential feature of the constitutional guarantees;‡

(*b*) that the High Court of Parliament Act must be judged by reference to its substance and not merely by its form or by the nomenclature used;[75]

(*c*) judging the measure in this way, it was clear:

  (i) that the High Court was not a court of law,[76] but

  (ii) that it was simply Parliament (functioning unicamerally by a simple majority) under another name;[77]

(*d*) the High Court of Parliament Act was, therefore, void, because Parliament as ordinarily constituted cannot empower another to do what it cannot do itself. Parliament as ordinarily constituted had attempted to empower Parliament functioning unicamerally by a simple majority, to do what the entrenched sections say may only be done unicamerally by a two-thirds majority.[78]

Commenting on this decision, Dean Irwin N. Griswold, of Harvard University, says: "In a sense the decision was anti-climactic. Although the issue was quite different from that involved in [the *Vote Case*] the second decision was hardly a surprise."[79]

* On August 29, 1952, that is, the day after the judgment of the High Court of Parliament.

† Centlivres, C.J., Greenberg, J.A., Schreiner, J.A., van den Heever, J.A., and Hoexter, J.A. Each of the learned Judges of Appeal gave separate, though largely complementary, reasons. Greenberg, J.A., was "in no disagreement with anything in the reasons prepared by the Chief Justice" (p. 787); Schreiner, J.A., said: "In general, I agree with the reasons of the Chief Justice" (p. 787).

‡ Hoexter, J.A., held that even assuming that the High Court was a court of law in form and in substance, the Act amended Section 152 because it deprived the citizen of his testing right. (pp. 794-5).

[1] *See also* JOURNAL, Vol. XX, 149.
[2] For an analysis of Act No. 46 of 1951, *see* JOURNAL, Vol. XX, at pp. 58 ff.
[3] The Cape franchise laws, as at the date of Act 46 of 1951, were summarised by Centlivres, C.J., in the *Vote Case*, at p. 451. *See also* JOURNAL, Vol. V, p. 35.
[4] 1952 (2) S.A. 428 (A.D.) at 454-5. [5] At 449. [6] At 442. [7] At 442.
[8] At 443. [9] At 443. [10] At 456, 459, 469.
[11] For a discussion of the question whether the Union Parliament may properly be described as a sovereign legislature, *see* my article in 16 (1953) *Modern Law Review*, pp. 274 ff.
[12] Centlivres, C.J., Greenberg, J.A., Schreiner, J.A., van den Heever, J.A., and Hoexter, J.A. [13] 1952 (2) S.A. 428 (A.D.) at 456.
[14] At p. 457. *See also* my essay on *Parliamentary Sovereignty, etc.*, Juta and Co., 1951, p. 24. [15] (1584), 3 Co. Rep. 7a at 7b.
[16] 1952 (2) S.A. 428 (A.D.) 459-60. [17] At 459, 461. [18] At 460.
[19] *The Statute of Westminster*, 5th ed. (1953), Appendix VIII, p. 340.
[20] 1952 (2) S.A. 428 (A.D.) at 461.
[21] The Court referred to *Attorney-General for New South Wales* v. *Trethowan*. [1932] A.C. 526.
[22] 1952 (2) S.A. 428 (A.D.) at 442. [23] At 442. [24] At 462. [25] [1935] A.C. 484.
[26] *See* my essay on *Parliamentary Sovereignty, etc.*, pp. 23 ff.
[27] 1952 (2) S.A. 428 (A.D.) at 463. [28] At 464. [29] At 462.
[30] At 462. [31] At 463. [32] At 463.
[33] At 465. *See also Parliamentary Sovereignty, etc.*, pp. 5 ff.
[34] *See* p. 96. [35] 1952 (2) S.A. 428 (A.D.) at 463.
[36] 1952 (4) S.A. 769 (A.D.) at 791.
[37] *The Statute of Westminster and Dominion Status*, 5th ed., p. 344.
[38] [1935] A.C. 484. [39] 1952 (2) S.A. 428 (A.D.) at 465-6.
[40] *See Parliamentary Sovereignty, etc.*, pp. 39-40.
[41] 1952 (2) S.A. 428 (A.D.) at 466.
[42] Cmd. 3717, para. 67, referred to in the *Vote Case*, at p. 457.
[43] 1952 (2) S.A. 428 (A.D.) at 460, 469. [44] At 462. [45] At 460.
[46] At 464. [47] At 464. [48] At 452-4.
[49] *See Bereng Griffith Lerotholi* v. *The King*, [1950] A.C. 11, and *Gideon Nkambule* v. *The King*, [1950] A.C. 379. [50] 1907 Transvaal Supreme Court Reports, p. 1077.
[51] *Ridsdale* v. *Clifton* (1877), 2 P.D. 276 at 307, *per* Lord Cairns.
[52] 1952 (2) S.A. 428 (A.D.) at 470. [53] At 471. [54] At 471.
[55] At 471-2. [56] At 472. [57] At 468. [58] At 472.
[59] At 469. The subject of the jurisdiction of the courts to inquire into the observance of the entrenched sections is discussed by the writer in 16 (1953) *Modern Law Review*, 274 ff.
[60] *Op. cit.*, p. 346. [61] *Op. cit.*, p. 346. [62] The *High Court Case* 1952 (4) S.A. 769 (A.D.) at 791. [63] *Op. cit.*, p. 346. [64] 1952 (4) S.A. 769 (A.D.) at 791.
[65] These contentions are discussed in 16 (1953) *Modern Law Review*, pp. 274 ff.
[66] *See* 78 *Assem. Hans.*, 3125. [67] Section 2.
[68] Section 1. [69] Section 3 (1). [70] Section 5. [71] Section 8.
[72] 1952 (2) S.A. at p. 770-1. [73] At p. 785.
[74] At pp. 779-81, 785, 786, 787, 792, 794-5. [75] At pp. 783, 792, 796.
[76] At pp. 782-4, 787, 792, 795-7, 788. [77] At pp. 784, 788, 793, 795, 796.
[78] At pp. 784, 790, 793, 796, 797. [79] 66 (1953) *Harvard Law Review*, 871.

XIII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1952

By J. M. Hugo, B.A., LL.B., J.P.,
Clerk of the House of Assembly

Notification of Member under Suppression of Communism Act.[1]— On January 21 a Select Committee was appointed for the purposes of S. 5 (1)*bis* of the Suppression of Communism Act, as amended,

in respect of Mr. Kahn, Member for Cape Western, and in respect of Mr. F. Carneson, a member of the Cape Provincial Council.[3]

On April 16 the Committee submitted a report finding:

(1) That the names of both appeared on the list in the custody of the designated officer;
(2) that there were no circumstances which would justify the removal of their names from such list;
(3) that neither of them had been convicted of an offence under S. 11 of the Act;
(4) that both were communists as defined in S. 1 of the Act;
(5) that both were office-bearers, members and active supporters of the Communist Party of South Africa;
(6) that before the promulgation of the Act both professed to be communists and, moreover, advocated, defended and encouraged the achievement of the objects of communism as defined in S. 1 of the Act;
(7) that before and after the promulgation of the Act both advocated, defended and encouraged acts or omissions which were calculated to further the achievement of the objects of communism as defined in S. 1 of the Act.[3]

The Report was considered on May 19 and 20 and approved of, and on May 26 Mr. Speaker announced to the House that he had been notified by the Minister of Justice, in terms of S. 5 of the Act, that Mr. Kahn ceased to be a member as from that day. The vacancy was gazetted on June 6.[4]

Revival of Senate Bills lapsed on Prorogation.[5]—At the end of the 1951 session 4 Bills received from the Senate for concurrence lapsed owing to prorogation. On January 23, 1952, a Message was received from the Senate requesting the House of Assembly to resume their consideration.

When the Message was under consideration an amendment was moved to omit 2 of the Bills included in the Message. Mr. Speaker stated, however, that he was unable to accept any amendment which sought to delete part of a Message received from the Senate.

The request contained in the Message was concurred in and all 4 Bills were in due course passed.[6]

Motion, Irrelevant in Part.—On the opening day of the session Notice was given of a Motion dealing with cost of living and wages, as well as with civil liberties. Mr. Speaker, in a private Ruling, held that the portion dealing with civil liberties was not relevant to the main subject of the Motion. The irrelevant portion was accordingly deleted from the Notice and was subsequently moved as an amendment to a Motion of no-confidence.[7]

Newspaper Comment on and Reference in Debate to Matters referred to Select Committees.—On February 27,[8] Mr. Speaker drew attention to the fact that the Annual Report of the Controller and

Auditor-General on Appropriation Accounts, etc., had been referred to the Select Committee on Public Accounts and indicated that while it was in order for the press to publish extracts from the Report, it would seem highly irregular to comment in leading articles upon the propriety or otherwise of the actions criticised before the Committee had been able to hear evidence and to submit its findings.

In the debate on the Second Reading of the Part Appropriation Bill several of the matters commented upon in the Controller and Auditor-General's Report were discussed at some length, and on March 4,[9] after the conclusion of the debate, Mr. Speaker reviewed the question of the propriety of debating in the House matters which had been referred to Select Committees for inquiry and report.

In referring to Rulings given in the House of Assembly in 1917 and in the House of Commons in 1891 and 1918, Mr. Speaker drew attention to two aspects of the question which emerge from a careful examination of the Rulings, namely, first, that it is difficult to prevent an overlapping debate where a Motion before the House and a matter referred to a Select Committee are interdependent, but that it is " in the hands of Members themselves to restrict such overlapping to the narrowest possible limit "; and, secondly, that the reference to a matter to a Select Committee does not preclude the House from considering it.

Mr. Speaker went on to say:

> The House always retains the overriding authority to debate on proper occasions any matter which it had referred to a Select Committee. There could so easily arise exceptional circumstances when the House might deem it in the public interest not to await the findings of a Committee.
>
> If, on the other hand, it should become the practice for members in debate in this House to prejudge the issues involved in a matter which the House had deliberately referred to a Select Committee for inquiry, it could only prejudice an impartial inquiry and undermine the authority and proper functioning of Select Committees. Members of the Committee having heard conflicting opinions voiced on the floor of the House would afterwards in the Committee find it difficult to hear and to sift with an unbiased mind the evidence to be given by witnesses.

In conclusion, Mr. Speaker appealed to Members to exercise the privilege of freedom of speech with the utmost caution when the House had referred a matter to a Select Committee for inquiry.[10]

Member Named.—On April 16, during debate, when reference was made to the fact that an hon. Member had been sent out, another Member interjected " it was a scandal " and, having refused to comply with Mr. Speaker's request to withdraw the reflection upon the Chair, he was named for disregarding the authority of the Chair.[11]

Leave to be Heard at Bar of the House.[12]—On May 19 a petition was presented from F. Carneson, a member of the Cape Provincial Council, praying for leave to be heard at the Bar of the House before the Report of the Select Committee on the Suppression of Communism Act Inquiry was considered. (*See above.*)

Notice was given of a Motion that the prayer of the petition be granted, but it was not reached.[13]

Dilatory Motion Lapsed on Automatic Adjournment.[14]—On May 26, a Motion for the adjournment of the House on a definite matter of urgent public importance lapsed when Mr. Speaker interrupted Business for the automatic adjournment.[15]

Suspension of Standing Orders.[16]—On June 18, in order to expedite the Business of the House, S.O. 159 (Stages of Bills) and 26 (Eleven o'clock rule) were suspended for the remainder of the session.[17]

Consideration of Senate Amendments regarded as Stage of Bill.[18]—On June 21, when Mr. Speaker announced a Message desiring the concurrence of the House of Assembly in amendments made by the Senate to the Defence Amendment Bill, a Member objected to the immediate consideration of the Message, but Mr. Speaker pointed out that the suspension of the Standing Order providing that not more than one stage of a Bill may be taken at the same sitting (S.O. 159) applied also to Bills returned to the Senate with amendments and that the Message could accordingly be considered immediately.[19]

Report Stage of Bills: Notice of Amendments Dispensed with Consequent upon Suspension of Standing Order.[20]—On June 24 Mr. Speaker, on a point of Order being raised, stated that S.O. 172 required notice to be given of amendments proposed at the Report Stage of a Bill, but as the House had by Resolution suspended S.O. 159, providing that not more than one stage of a bill may be taken at the same sitting, it seemed only right that Members should not be deprived of the opportunity of moving amendments at the Report Stage. He was accordingly prepared to allow Members an opportunity to move amendments without giving the notice required.[21]

Direct Pecuniary Interest of Members.[22]—On June 12, after an amendment had been moved in Committee of Supply to reduce the salary of the Minister of Native Affairs and of members of the Native Affairs Commission, the Deputy-Chairman was asked whether it was competent for Members of the House, who were also members of the Commission, to vote upon or take part in the discussion of the amendment.

The Deputy-Chairman pointed out that S.O. 122, which prohibited a Member from voting upon or taking part in the discussion of a matter in which he had a direct pecuniary interest, also laid down that the Standing Order did not apply to any vote or discussion on a matter involving a question of public policy. He further pointed out that while the Native Affairs Commission had been established by Act of Parliament as a matter of state policy, that Act specifically provided that Members of Parliament should receive remuneration as members of the Commission. He was accordingly not prepared to rule that the Members concerned were precluded from voting or taking part in the discussion.[23]

Division on Motion " That Mr. Speaker leave the Chair ".[24]—Under S.O. 79 the question " That Mr. Speaker leave the Chair " to go into Committee on a bill is decided without amendment or debate, but on June 21, when the Question was put a division was called.[25]

Removal of Notices of Motion, Questions and Amendments from Order Paper.—A Member having been suspended from the service of the House on April 16, a Notice of a question standing in his name for Friday, April 18, was removed from the Order Paper. On his return to the House notice of a similar question was given.[26]

When Mr. Kahn ceased to be a Member as from May 26, 5 questions, 3 notices of Motion and a number of amendments to a bill, standing in his name, were removed from the Order Paper. The amendments were taken over by another Member and printed on the Order Paper for the next day.[27]

[1] No. 44 of 1950; *see also* JOURNAL, Vols. XIX, 78; XX, 71. [2] 1952 VOTES, 22. [3] S.C. '52. [4] 1952 VOTES, 670, 677, 690. [5] *See also* JOURNAL, Vols. XV, 198; XVI, 172; XIX, 231. [6] 1952 VOTES, 43, 102. [7] *Ibid.*, 18, 68. [8] *Ibid.*, 287. [9] *Ibid.*, 317. [10] *Ibid*, 287, 316. [11] *Ibid.*, 486. [12] *See also* JOURNAL, Vols. I, 30; V, 89; XI-XII, 218; XV, 180; XIX, 231. [13] 1952 VOTES, 668, 681. [14] *See* General Index. [15] 1952 VOTES, 691. [16] *See* General Index. [17] 1952 VOTES, 893. [18] *See* JOURNAL, Vols. XV, 199; XVI, 174. [19] 80 *Assem. Hans.*, 8962. [20] *See also* JOURNAL, Vol. X, 159. [21] 1952 VOTES, 976. [22] *See also*, JOURNAL, Vol. XIX, 259. [23] 1952 VOTES, 834. [24] *See also* JOURNAL, Vol. IV, 57. [25] 1952 VOTES, 936. [26] 1952 VOTES, 494, 545. [27] *Ibid.*, 691, 693, 694.

XIV. DISCRIMINATORY LEGISLATION: VALIDITY OF THE CEYLON CITIZENSHIP ACT

By R. St. L. P. Deraniyagala, M.B.E.,
Clerk of the House of Representatives

The term " citizen of Ceylon " was defined for the first time by the Ceylon Citizenship Act (No. 18 of 1948). This Act provided that a person born in Ceylon before a certain date shall be deemed a citizen of Ceylon by descent if (*a*) his father was born in Ceylon, or (*b*) his paternal grandfather and great grandfather were born in Ceylon. It further provided that a person born outside Ceylon shall be deemed a citizen of Ceylon by descent if: (*a*) his father and paternal grandfather were born in Ceylon, or (*b*) his paternal great grandfather were born in Ceylon.

Subsequent to the passing of this Act the electoral law of Ceylon was amended by the Franchise Act (No. 48 of 1949) by restricting those qualified to have their names entered in a register of electors to citizens of Ceylon.

In the case of *Govindan Sellappah Nayar Kodakan Pillai* (appellant) v. *Punchi Banda Mudannayaka* (respondent) the appellant, an

Indian Tamil, who did not possess the qualifications needed for Ceylon citizenship and had been refused an application to have his name entered in the electoral register, sought the Ruling of the Privy Council on the validity of the Ceylon Citizenship Act.

On behalf of the appellant it was argued that while the Act is in general terms if its true character were ascertained it would be evident that the intention of the legislature was to do indirectly what it was prohibited from doing directly, viz., to make persons of the Indian Tamil community liable to a disability to which persons of other communities were not made liable, in contravention of Section 29 of the Ceylon (Constitution and Independence) Order-in-Council, 1946, which so far as material is as follows:

29 (1). Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island,

(2) No such law shall:

(*a*) . . .

(*b*) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or

(*c*) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or

(*d*) . . .

(3) Any law made in contravention of subsection (2) of this Section shall, to the extent of such contravention, be void.

On behalf of the respondent it was conceded that the effect of the Act would be to disenfranchise a large number of Indian Tamils who could not become citizens of Ceylon as they did not possess the required qualifications. It was held by the Privy Council that in cases of this nature it is open to a court to inquire whether a Statute, though framed so as not to offend against the constitutional limitation of the power of the legislature, may indirectly achieve the same result, and whether in such circumstances the legislation is *ultra vires*. They accepted the principle that a legislature cannot do indirectly what it is forbidden to do directly, and that it must be assumed to intend the necessary effect of its Statutes. However, the maxim "*omnia praesumuntur rite esse acta*" is as applicable to the act of a legislature as to any other acts and it must be shown affirmatively by the party challenging a Statute which is, upon its face, *intra vires* that it was enacted as a part of a plan to effect indirectly something which the legislature had no power to achieve directly.

In examining the motives of the legislature in passing the Citizenship Act it was brought to the notice of the Privy Council that the Ceylon Parliament had passed the Indian and Pakistani Residents Citizenship Act (No. 3 of 1949) which had the effect of relaxing, for Indians and Pakistanis, the qualifications laid down in the Citizenship Act for becoming Citizens of Ceylon and enabled an Indian

Tamil by an application to obtain citizenship of Ceylon by registration provided he had certain residential qualifications. The Privy Council were of opinion that if there was a legislative plan the plan must be looked upon as a whole, and taking into account this Act, it was evident to their Lordships that the legislature did not intend to prevent Indian Tamils from attaining citizenship provided that they were sufficiently connected with Ceylon.

XV. POLITICAL PARTIES IN INDIA

By M. N. Kaul, M.A.
Secretary of the House of the People.

The following general principles have been laid down by the Speaker in regard to the recognition of Parties in the House of the People:

(i) Members who propose to form a Party should possess a distinct ideology and programme of their own; they should have been returned to the House by the electorate on that programme and ideology.

(ii) The Party should have an organisation both inside and outside the House in order to keep in touch with all important issues before the country.

(iii) Any Group of Members to be recognised as a Party should at least have a strength equal to the quorum fixed to constitute a sitting of the House, *i.e.*, one-tenth of the total number of the House. Where, however, the test of the minimum number of Members is satisfied it does not follow that that Group of Members will be automatically recognised as a Party. The first 2 conditions must also be satisfied.

(iv) Groups of Members who satisfy the first 2 conditions, mentioned above, and have a strength of at least 30 Members, would be recognised as Opposition Groups for limited purposes.

(v) Other Groups which possess the first 2 conditions, but have a strength below 30 would be considered as Groups only to the extent of allotment of blocks of seats in the House. They may or may not be given other facilities normally accorded to a Group.

With a view to facilitating smooth and efficient working of the various Parties and Groups in Parliament, office accommodation, according to their requirements, is made available to them in Parliament House. At the time of Party or Group meetings, necessary facilities in regard to seating, lighting, heating or cooling (as the case may be), etc., are also provided free of charge. Besides

these any other arrangements, *e.g.*, bus service, which may be required on such occasions, are also made by the Parliament Secretariat.

The party composition of every legislative body at November 15, 1952, is set forth below:

(1) Central Legislature

(*a*) *Council of States.*—Membership, 216. The only Party (Congress) numbered 150. There were 2 (unrecognised) Groups: (i) Communists and allies (16) and Praja Socialists (10). 28 Members were unattached and 12 nominated in respect of such matters as Literature, Science, Art and Social Service.

(*b*) *House of the People.*—Membership, 498, excluding Speaker. Party: Congress (364). Recognised Opposition Group: Communists and allies (35). Unrecognised Groups: National Democratic (31), Independent (26), Praja Socialists (22). 17 Members were unattached, and there were 3 vacancies.

(2) Part A States

Assam.—Legislative Assembly: membership, 108. Congress (87), United Opposition (18). There were 3 vacancies.

Bihar.—(*a*) Legislative Council: membership, 72. Congress (52), United Opposition Block (8), Teachers (5), Socialists (2), unattached (5).

(*b*) Legislative Assembly: membership, 331 (of whom one was nominated). In power: Congress (240). In opposition: Jhar Khand (32), Socialists (23), Janta (8), Lok Sovak Sangh (7), unattached and single-member Groups (17). 4 vacancies.

Bombay.—(*a*) Legislative Council: membership, 72 (12 nominated). Congress (56), Independents (8), Socialists (3), Peasants and Workers (2), Hindu Mahasabha (1). 2 vacancies.

(*b*) Legislative Assembly: membership, 316 (one nominated). Congress (268), Peasants and Workers (15), Socialists (8), Kamgar Kisan (2), Communists (2), Independents and single-member Groups (20). One vacancy.

Madhya Pradesh.—Legislative Council: membership, 233 (one nominated). Congress (in power) (197), People's Party (in opposition) (32), Independents (4).

Madras.—(*a*) Legislative Council: membership, 71, excluding Chairman (12 nominated). Congress (34), United Democratic Front (10), Independents and single-member Groups (27).

(*b*) Legislative Assembly: membership, 375. Congress (166), Krishak Lok Party (18), Commonwealth (5), Socialists (13), Justice (one), Unattached Independents (14), United Democratic Front (153), Muslim League (5).

Orissa.—Legislative Assembly: membership, 139, excluding Speaker. In power: Congress (73). In opposition: A. I. Gantantra

Parished (31), Socialists (10), Communists (7), Independent Legislatures Group (12), Independent People's Party (4), Forward Block (one), Independent (one).

Punjab.—(*a*) Legislative Council: membership, 40 (8 nominated). The strength of political parties is not officially known.

(*b*) Legislative Assembly: membership, 126. In power: Congress (100). In opposition: Panthic (16), Communist (6), Zamindar (2), Independent (one), Forward Block (one).

Uttar Pradesh.—(*a*) Legislative Council: membership, 71, excluding Chairman. Congress (54), Socialists (3), Independents (14).

(*b*) Legislative Assembly: membership, 429, excluding Speaker. Congress (389), Socialists (19), U.P.P.P. (2), Jan Sangh (2), Independents and single-member Groups (17).

West Bengal.—(*a*) Legislative Council: membership, 51 (9 nominated). Party distribution not known, but in general 39 were on government side and 12 in opposition.

(*b*) Legislative Assembly: membership, 239, excluding Speaker (2 nominated). In power: Congress Assembly Party (158). In opposition: Communist Party of India (30), National Democratic Party (17), Krishak-Proja-Majdoor Party (15), Forward Block (14), Independent (5).

(3) Part B States

Hyderabad.—Legislative Assembly: membership, 175. In power: Congress (93). In opposition: People's Democratic Front (38), Peasants and Workers (10), Socialists (11), Scheduled Castes Federation (5), Independents (14). 4 vacancies.

Madhya Bharat.—Legislative Assembly: membership, 99. In power: Congress (75). In opposition: Hindu Mahasabha (11). Other groups: Jan Sangh (4), Socialists (4), Ram Rajya Parishad (2), Independents (3).

Mysore.—(*a*) Legislative Council: membership, 40 (8 nominated). Congress (26), K.M.P.P. (3), Socialist (one), Independents (10).

(*b*) Legislative Assembly: membership, 100 (one nominated). In power: Congress (74). In opposition (known collectively as " United People's Front "): K.M.P.P. (8), Socialists (2), Communist (one). Other groups: Scheduled Castes Federation (one), Independents (some of whom were in opposition) (14).

P.E.P.S.U.—Legislative Assembly: membership, 60. United Front (28), Congress (26), Communists (3), Independents (3).

Rajasthan.—Legislative Assembly: membership, 160. Congress (83), Sanyukta Dal (72), Independents (3). 2 vacancies.

Saurashtra.—Legislative Assembly: membership, 60. In power: Congress, 55. Other groups: Socialists (2), Khedut Sangh (one), Independents (2).

Travancore-Cochin.—Legislative Assembly: membership, 109 (one nominated). In power: Congress (46). In opposition: United

Fronts Leftists (31), Socialists (11), Travancore Tamil Nad Congress (8), Independents (12). One vacancy.

(4) Part C States

Ajmer.—Legislative Assembly: membership, 30. In power: Congress (20). In opposition: Jan Sangh (3), Independents (4), Pursharthi Panchayat (3).

Bhopal.—Legislative Assembly: membership, 30 (5 reserved for Scheduled Castes and 2 for Scheduled Tribes). In power: Congress (25). Other Groups: Hindu Mahasabha (one), Jan Sangh (one), Independents (3).

Coorg.—Legislative Assembly: membership, 24 (6 reserved for Backward Classes and Tribes). In power: Congress (15). In opposition: Anti-Merger (9).

Delhi.—Legislative Assembly: membership, 48. In power: Congress (39). In opposition: Jan Sangh (2), Socialists (2), Independents (4), Hindu Mahasabha (one).

Himachal Pradesh.—Legislative Assembly: membership, 36. Congress (26), Himachal Democratic Front (10).

Vindhya Pradesh.—Legislative Assembly: membership, 60 (6 reserved for Scheduled Castes and 6 for Scheduled Tribes). In power: Congress (39). Other groups: Socialists (11), K.M.P.P. (3), Jan Sangh (2), Ram Rajya Parishad (2), Independents (2). One vacancy.

XVI. FINANCIAL POWERS OF THE UPPER HOUSE UNDER THE INDIAN CONSTITUTION

By Charu C. Chowdhuri,
Special Officer, Legislative Council, West Bengal.

Bicameral legislatures were provided for by the Government of India Act, 1935, and, in fact, there were bicameral legislatures in the Centre and in many of the Provinces in India during the period when that Act was in operation. The new Indian Constitution has, however, made considerable changes in the powers of the Upper House, particularly in regard to financial matters, and it may be of some interest to discuss the financial powers of the Upper House in the light of the experience gained since the new Constitution came into force.

The Indian Constitution has adopted broadly the practice and conventions of the British Parliament under which the initiative and control in respect of financial matters lie with the Lower House, the House of Commons, and the responsibility discharged in these matters by the Upper House, the House of Lords, is, as stated by May, " concurrence and not initiative or amendment ". But in

certain respects Upper Houses in India—the Council of States at the Centre and the Legislative Councils in the States—have wider powers than the House of Lords; as, for example, in the case of amendments to certain classes of financial bills. In certain other respects, on the other hand, their powers are more restricted; as, for example, in the case of Money Bills, to which the concurrence of the Upper House is not necessary.

There are, as is well-known, two main classes of financial business that come up for consideration before the Legislature—the Annual Estimates and Bills containing financial provisions.

Under the provisions of the Indian Constitution, the Annual Estimates fall to be considered in 3 stages: (*a*) presentation of the estimates and a general discussion, (*b*) demands for grant of supply, and (*c*) appropriation of the grants by the Appropriation Bill.

Having regard to the different kinds of powers that the Upper House can exercise under the Indian Constitution in respect of bills containing financial provisions, such bills may be classified under the following heads:

(*a*) Money Bills. A Money Bill has been defined in the Indian Constitution (Arts. 110 and 199) as a bill which contains *only* provisions regarding the following matters and nothing else, viz., (i) taxation, (ii) borrowing of money by the Government, (iii) receipt of money into, withdrawal and appropriation of money out of, and the custody of, the Consolidated Fund, (iv) declaring any expenditure to be charged on the Consolidated Fund, (v) audit, and (vi) any matter incidental to the foregoing matters. This definition, it will be observed, corresponds to the definition of a Money Bill in the British Parliament Act, 1911, and contemplates the same kind of bills.

(*b*) Financial Bills. These are bills which provide for any of the matters specified above but *not exclusively* (Arts. 117 and 207) and thus do not fall within the definition of Money Bills. Such bills would correspond to the other class of Money Bills which are not within the definition in the Parliament Act but in respect of which also the House of Commons claims privilege.

(*c*) Bills which provide for the imposition of any fine or other pecuniary penalty, or for the payment of any fees for licence or services rendered. (Arts. 110 and 199.)

(*d*) Bills which provide for the levy of any tax or rate by any local body for local purposes. (Arts. 110 (2), proviso, and 199 (2), proviso.)

(*e*) Bills which involve expenditure from the public revenues. (Arts. 117 (3) and 207 (3).)

Powers of the Upper House in Relation to Bills

We shall take up for consideration first the power that the Upper House can exercise in relation to the foregoing classes of bills. Such power may be considered under the following aspects, (*a*) right of

initiation, (*b*) right of amendment, (*c*) right of recommendation, (*d*) right of consideration, and (*e*) right of rejection.

Right of Initiation

The Upper House has no right of initiation in respect of Money Bills and Financial Bills. These bills cannot be introduced in the Upper House but must originate in the Lower House (Arts. 109, 117, 198 and 207). There is, however, no bar to the other classes of bills being introduced in the Upper House. In India " financial resolutions " are not necessary and such bills can be introduced in, and passed by, the Upper House as of right; and there would be no necessity for the device, resorted to by the House of Lords, of leaving out by " privilege amendment " certain words or clauses to which the House of Commons may object on the ground of privilege.

Right of Amendment

In respect of the right of amendment also, the power of the Upper House under the Indian Constitution is somewhat different from that of the House of Lords. The Upper House, like the House of Lords, has no right of making any amendment to a Money Bill (Arts. 109, 117, 198 and 207). Amendments can, however, be made by the Upper House as of right to all the other classes of bills, and there is no question of the Lower House asserting or waiving financial privilege thereon.

Right of Recommendation

In respect of Money Bills the Indian Constitution has given to the Upper House the right or privilege of making recommendations for amendments (Arts. 109 and 117). (A similar power is in effect, though not very explicitly, conferred on the House of Lords by Section 1 (1) of the Parliament Act, in the words " a Money Bill . . . not passed by the House of Lords without amendment within one month . . . shall, *unless the House of Commons direct to the contrary*, be presented to His Majesty (for Royal Assent) ".) Although, in India, the Upper House is debarred from making any amendments itself, it can recommend to the Lower House that certain amendments be made. This provision in the Indian Constitution has been adopted from the practice which obtains in Australia and is known as " the process of suggestion ". The practice had its origin in the South Australian Parliament in 1857, when the 2 Houses agreed that it would be competent for the Council (the Upper House) to suggest any alteration in a Money Bill (Quick and Garran, *Constitution of the Australian Commonwealth*). Such a provision was subsequently embodied in Section 53 of the Commonwealth of Australia Constitution Act of 1900. Such a provision also occurred in the Irish Constitution of 1922. As the right to make recommendations is the only right which the Upper House

can exercise in respect of Money Bills, it would be convenient to discuss in this connection the procedure which is or should be adopted with regard to them in the Upper House.

The Indian Constitution provides that a Money Bill passed by the Lower House should be transmitted to the Upper House for its recommendations and that the Upper House shall return the bill within 14 days (Arts. 109 and 198). It further provides that the bill would be deemed to be passed by both the Houses with or without the amendments recommended by the Upper House according as they are accepted or rejected by the Lower House. The practice in Australia is a little different; if the Upper House suggests any alteration, the bill is sent to the Lower House during the Second Reading stage with the suggestions in a schedule. If the Lower House accepts the suggestions or any of them, it incorporates them in the bill and sends it back again to the Upper House for concurrence. No such procedure is envisaged by the Indian Constitution. When a bill is returned by the Upper House to the Lower House with its recommendations, the bill is deemed to be passed by both the Houses without any further action or concurrence by the Upper House. Consequently, no question of passing or rejecting a Money Bill can arise.

No Third Reading of a Money Bill is, therefore, contemplated by the Indian Constitution. The rules of procedure of some of the Upper Houses in India contemplate a Third Reading in the case of Money Bills also. But such a procedure will lead to anomalous results. Of course, if the Upper House has no recommendations to make, it can pass the bill in the form in which it was passed by the Lower House. But if any recommendations are to be made, the Upper House cannot pass the bill, for it does not agree to the bill as passed by the Lower House. Neither can it pass the bill in an amended form, for, it has no right to amend. The only thing it can do in such a case is to send back the bill with its recommendations to the Lower House. And once the bill gets there, whether the recommendations are accepted or not, the bill, as already stated, will be deemed to be passed by both the Houses without any further action by the Upper House. The correct procedure seems to have been laid down by the Rules of the Council of States and of the West Bengal Legislative Council under which a Money Bill is taken into consideration by the Upper House, proposals for amendments are made in the form of recommendations, and thereafter the Bill is sent back to the Lower House without a Third Reading, with or without recommendations, as the case may be. It may be pointed out that on the similar provision of the Irish Constitution of 1922, Hugh Kennedy, Attorney General, afterwards Chief Justice of Ireland, expressed the opinion that the Senate, *i.e.*, the Upper House, had only the right of making recommendations and nothing else. (Donald O'Sullivan, *The Irish Free State and its Senate.*)

As regards rejecting a Money Bill, it is, of course, theoretically possible to reject a Money Bill at the Second Reading stage by refusing to take the bill into consideration, but as the concurrence of the Upper House is not necessary it would have no practical effect because the bill would be deemed to be passed by both the Houses if it is not returned to the Lower House within the specified time.

Right of Consideration

Under the Indian Constitution, a Money Bill, as already stated, has to be sent to the Upper House for its recommendations. Whether the Upper House makes any recommendations or not, it has a right to consider a Money Bill and express its opinion in debate. Proper facilities for a debate must therefore be given by moving the necessary Motion in the Upper House.

A question of constitutional propriety arose in the Madras Legislative Council over the consideration of the Madras City Municipal and Local Bodies Bill, 1950, which had been certified as a Money Bill.* After the bill had passed the consideration stage in the Upper House, the Minister-in-charge declined to move for the Third Reading of the bill (a step contemplated by the Rules of the Madras Council), not on the ground that he wanted the bill to be dropped but on the ground that thereby the Council would be prevented from returning the bill to the Assembly, the Lower House, and the bill would become law without further action after the expiry of 14 days. Naturally, the Chairman of the Council took strong exception to the course adopted. He said that if such a course was permitted, it would be possible to stifle discussion in the Upper House even at an earlier stage by not moving the necessary Motion for consideration or Second Reading and thereby deprive the Upper House of its undoubted constitutional right to consider a Money Bill. Although that particular bill went without a Third Reading, the Chairman later on gave a Ruling that it would be incumbent on the Government to make the appropriate Motions if they wanted to proceed with a bill.

Right of Rejection

The right of the Upper House to reject a Money Bill has been discussed above. As regards other bills relating to financial matters, the Upper House has the same right to reject them as it has in regard to ordinary bills. In the event of disagreement between the two Houses, the Upper House cannot effectively prevent a bill being passed; it can only delay its passing. The procedure in such a case is different in the Council of States and in the State Legislative Councils. In the case of the Council of States, the Constitution provides for a joint session of the 2 Houses if a bill is not agreed to by the two Houses within 6 months or is rejected by the Upper

* Madras Legislative Council Debates, Vol. II, 1950, p. 436.

House. If the bill is passed by a majority in the joint session, it becomes law. In the States, however, there is no provision for any joint session. If a bill is rejected by the Upper House or is not agreed to within 3 months, the bill may be passed by the Lower House a second time and on such passing the bill would become law if it is not agreed to by the Upper House within one month.

The Annual Estimates

Under the Indian Constitution, the annual estimates, or the financial statement as it is called, have to be presented to both the Houses (Arts. 112 and 202) and not to the Lower House only as is done in England. At the time of presenting the estimates in the Lower House, the Finance Minister makes his statement of financial policy. There is no uniform practice, however, as regards whether a statement should be made in the Upper House also. In the Council of States (at the Centre) the estimates were presented this year—the first after the House came into existence—by the Leader of the House but no statement or speech was made. In West Bengal, however, the Chief Minister, who is also the Finance Minister, made a speech in the Council giving a short résumé of the policy he had outlined in his Budget speech in the Lower House.

As the estimates are presented to the Upper House also, it claims the right to discuss them and express its opinion thereon. In fact, the Rules of all Upper Houses provide for a general discussion of the estimates. The discussion is initiated ordinarily by the Opposition. No specific Motion—such as " moving for papers " in the House of Lords, or a Motion for moving the Speaker out of the Chair, or an amendment thereto in the House of Commons—is, however, proposed before the House. Consequently, the debate is not clinched to any particular issue but covers the entire field of the financial policy involved in the estimates. At the conclusion of the debate the Finance Minister ordinarily replies.

The demands for grant of supply are not made to the Upper House. It is the exclusive privilege of the Lower House, as in the British Parliament, to grant supply to the Government.

The Appropriation Bill

The Appropriation Bill, of course, has to be sent to the Upper House, and as it is a Money Bill, the procedure relating to Money Bills as already described has to be followed. In the case of the Appropriation Bill, however, there is practically no scope for making any recommendation for amendment. For the Indian Constitution has in this respect adopted the practice of the House of Commons and provides that no amendment which would have the effect of varying the amount or altering the destination of any grant can be proposed to a Money Bill (Arts. 114 and 204). Although no specific mention has been made about an amendment to omit any item or grant, it is presumed that the Indian Legislatures would follow the

British practice in this respect also and such an amendment would be ruled out of order. The debate on the Appropriation Bill in the Upper House will therefore be confined to the Second Reading stage of the bill.

Debate on the Estimates

In the general discussion that follows the presentation of the estimates, a criticism of the general financial policy of the Government is made. In the Lower House, individual departments come in for criticism at the time demands are made for those departments. The Upper House is at a disadvantage in this respect. As no demands for grants are placed before it, questions of the administrative policy of particular departments can only be raised during the general discussion of the estimates or the debate on the Appropriation Bill. But as in neither case is there any specific Motion before the House, the debate tends to be discursive, there is no knowing what subjects would be raised in the debate, and the Ministers having no notice are not always present to reply. To make the debate fruitful it would mean that all the Ministers should be present both during the general discussion and the debate on the Appropriation Bill. Otherwise the debate becomes unreal.

Some means will therefore have to be evolved whereby the Upper House can usefully contribute to the discussion of the estimates.

A debate on a particular subject can, of course, be raised during the consideration of the Appropriation Bill by arrangement through what are known as " usual channels ", that is to say, by arrangement between the whips of the Opposition and the Government. But in the absence of an organised single Opposition, it is not always possible to adopt this course.

A method was evolved some time ago in the South African Parliament for giving an opportunity to the Upper House to criticise individual departments. The Minister for a particular department moved a Motion that " this House takes into review the policy pursued by the Minister of —— department ". A debate followed either on this Motion or any amendment that might be proposed to it. If such a Motion was made, the Senate did not go into Committee on the Appropriation Bill and did not require the presence of all the Ministers during the debate thereon.

Another course may be suggested. An amendment for the omission of an item in the Appropriation Bill may be tabled and although such an amendment would be out of order, it may be used as a means of giving notice as to the matter sought to be raised. Such a procedure is not entirely unknown. In the House of Commons in England, an amendment to leave out a clause of a bill is out of order; but such amendments are tabled and although never called, are allowed to remain on the Order Paper for the purpose of indicating that the Member desires to speak on the clause.

XVII. PRESENTATION OF A MACE TO THE LEGISLATIVE COUNCIL OF MALAYA

By Owen Clough, C.M.G.,
Honorary Life President of the Society

At 10 o'clock a.m. on March 19, 1952, a unique episode in the history of the Federation took place. The proceedings opened by the Chief Secretary moving for the suspension of S.R. & O. 121, in order to enable the Presentation to take place. The Serjeant-at-Arms (Hon. Dato Yahya bin Abdul Razak, Orang Besar of the Kuala Lumpur District) reported to the President that the Representatives of Their Highnesses the Rulers were inquiring whether the Honourable Council would be pleased to receive them, upon which the President said:

I take it that it is the pleasure of this Council that the Representatives of Their Highnesses the Rulers be admitted ?

—to which Honourable Members answered: " Aye ".

The President: " Admit them ".

The Representatives of Their Highnesses the Rulers consisting of:

Enche Mustapha Albakri bin Haji Hassan, J.K.P., O.B.E., M.O.S., Keeper of the Rulers' Seal;

Dato Haji Mohamed Razalli bin Haji Mohamed Ali Wasi, M.C.S., Orang Kaya Kaya Laksamana, Perak;

Captain Mohamed Salleh bin Haji Sulaiman, M.B.E., E.D., M.C.S.,

were admitted to the Bar by the Serjeant-at-Arms.

The President then said:

I welcome you, Gentlemen, on behalf of this Council. Pray be seated.

Honourable Members of the Legislative Council, the Mace which is being Presented in this Council Chamber this morning is the first article of regalia which this Council has come to possess of its own.

This Mace is the gracious gift of Their Highnesses the Rulers and in its materials and its workmanship it embodies a great deal of what is best in this country. The silver and the gold are from our land, the shaping of these materials has been done by Malay craftsmen, and into the intricate working and chasing of these metals has gone the accumulated skill and craftsmanship of 800 years of Malayan history.

How appropriate it is that these age-old materials and skills should be gathered together in one object which, in its function, expresses the progress to good and reasonable government which we are making in this country. This Mace is not only a symbol of the partnership that already exists between Her Majesty the Queen and Their Highnesses the Rulers, it is the symbol of the growing strength of a parliamentary, democratic and constitutional form of Government.

In England, the Mace represents the Sovereign in the House of Commons. At one and the same time it represents the presence of the Sovereign and his absence, because although it is the symbol of sovereignty it is associated with the independence of the Chamber from the actual presence—and in former times the very strong personal influence—of the Sovereign over the course of the deliberations and actions of the Legislative Assembly.

In our Federation Chamber, it represents above everything the progress

LEGISLATIVE COUNCIL OF MALAYA: THE SERJEANT-AT-ARMS LEADING THE MACE BEARER AND THE REPRESENTATIVES OF THEIR HIGHNESSES THE RULERS

To face p. 120

LEGISLATIVE COUNCIL OF MALAYA: THE MACE ON THE CLERK'S TABLE AFTER THE PRESENTATION

which we are making, and which we intend further to make, towards constitutional and responsible government—a form of government in which Her Majesty the Queen, Their Highnesses the Rulers and the people of Malaya are in partnership.

The President then called upon the Leader of the Representatives (Enche Mustapha Albakri bin Haji Hassan) who said:

Your Excellency and Honourable Members, my colleagues and I have come to the Bar of this Honourable House entrusted with the duty of delivering to this House a Mace, the gift of Their Highnesses the Rulers of the Malay States. There is no need for me to mention the significance of the Mace, but I would like to point out that although this Mace is a gift of Their Highnesses the Rulers alone, it symbolizes the joint authority and the dignity of the British Crown and of Their Highnesses the Rulers. I have here with me a Message from Their Highnesses which I will now read.

The Message was then read in Malay and in English by Captain Mohamed Salleh bin Haji Sulaiman as follows:

Your Excellency and Honourable Members, on this unique occasion, We, the Rulers of the Malay States, have commanded Our Keeper of the Rulers' Seal and other officers We have named to represent Us and to convey to this Honourable House a gift of a Mace from us. In the Mother of Parliaments at Westminster and in all the Parliaments of the nations within the Commonwealth, the Mace symbolizes the dignity and authority of the Crown and in this Mace you have the symbol embodying the joint authority of the British Crown and of Ourselves, a concrete evidence of the partnership in the Government of this country.

The gift of this Mace is indicative of Our hope and desire for the progressive political advancement and constitutional development of this country. Free election to the Municipal Commissions has already been introduced and steps are now being taken in the various States to introduce that system to the Town Councils. We take this opportunity to repeat Our promise that as soon as circumstances and local conditions permit, legislation will be introduced to provide for the election of members to the several legislatures established pursuant to the Federation of Malaya Agreement, 1948.

You, the Honourable Members, may not have been elected in accordance with democratic practice but you are nonetheless representatives of the people and We are very happy to note that you have discharged your high and noble duties in the spirit and traditions of democracy. We pray that the Almighty Allah will give you strength and guidance in the discharge of your duty.

The Mace was then placed on the Table.

The Chief Secretary moved:

That this Council express its gratitude to Their Highnesses the Rulers for the gift of a Mace which will serve henceforward as the visible symbol in this Council of the authority both of Her Majesty the Queen and of Their Highnesses the Rulers.

The Motion being supported by Tuan Sheikh Ahmad bin Sheikh Mustapha, on behalf of the Unofficial Members of the Council, was put and agreed to, *nemine contradicente*.

Their Highnesses' Representatives were then conducted out of the Chamber by the Serjeant-at-Arms carrying the Mace, after which the Serjeant-at-Arms returned to the Council and replaced the Mace on the Table and the Council adjourned.

The Mace was made by Malay silversmiths working under the

supervision of the Kelantan (Malay) Arts and Crafts Organisation to an approved design drawn by Nik Mahmud bin Idris, Art Master in the Education Department, Kelantan. Its length is 4 feet 7½ inches. The shaft is of hardwood covered with silver of 999.8 fineness, and the 6 gold panels on the shaft in the likeness of ears of ripe padi form the main decorative " motif ". Over the head of the Mace is an 11 pointed gold star hung between the horns of a gold crescent, symbolising the 11 Federated Governments. The 11 medallions spaced round the rim of the head of the Mace show the heraldic devices of the 9 States and 2 Settlements in alphabetical order. The Arms of the Federation, which have been approved by Their Highnesses the Rulers and are being laid before Her Majesty the Queen, are on opposite faces of the head of the Mace. The motto is " Unity is Strength "—in Malay " Bersekutu bertambah mutu ". The 4 tigers' heads support the head of the Mace. Provision has been made in its base for sealing a small piece of rubber, a small piece of tin metal and a few grains of rice, symbolic of the country's main products. A special casket of *kulim* wood has also been made for the Mace. The total amount of fine gold used is 7¼ ounces and that of silver of 999.8 fineness is 155¼ ounces.*

* The last paragraph was contributed by the Clerk of the Councils.—[O. C.].

XVIII. APPLICATIONS OF PRIVILEGE, 1952

1. At Westminster

Reflections upon one House by a Member of another.—Shortly before the adjournment of the House of Commons on April 24, 1952,[1] the hon. Member for Blackburn, East (Mrs. Barbara Castle) sought the guidance of the Chair concerning a report, published that evening in the *Star*, of a speech delivered by Lord Mancroft at the annual meeting of the Primrose League at Caxton Hall, Westminster (*for full quotation see below*). The Deputy-Speaker (Colonel Sir Charles MacAndrew) asked her to raise the matter again the next day, in order that Mr. Speaker might give a Ruling.

The next day (April 25)[2] being a Friday, Mrs. Castle, immediately after Prayers, duly brought up the Question, and quoted the report in the *Star*, which read as follows:

> Several Conservative M.P.s fresh (or faded) from their all-night sitting, were on the platform at the annual meeting of the Primrose League at Caxton Hall, Westminster, today. Lord Mancroft, Chancellor of the League, turning to some of the M.P.s said: " Unlike them, I am not paid a thousand a year for larking about in the division lobbies at night with Bessie Braddock and the rest of the girls; I have to earn my living ".

She suggested that these words were a contempt of the House of Commons and a grave reflection upon the work of the House,

and observed that it was not the first time that the noble Lord had cast aspersions upon their activities.

Mr. Speaker then asked the hon. Member to bring the newspaper to the Table.

Copy of newspaper handed in.

Mr. Speaker said that, as the extract had been read in full, he would not ask the Clerk to read it again. He Ruled that a *prima facie* case of breach of Privilege had been made out, and that the matter had been raised at the first opportunity.

The hon. Member for Kelvingrove, Glasgow (Lt.-Colonel Walter Elliot) said that he had offered his support to Mrs. Castle in this matter, and had received a letter of apology from the noble Lord, which he had been asked to deliver personally to Mr. Speaker.

Letter handed in, and read by Mr. Speaker, as follows :

Dear Mr. Speaker,

I am most upset to read in the newspapers this morning that a flippant aside of mine in a speech yesterday has been considered to reflect upon the dignity of the House of Commons. I can assure you that nothing would be further from my intention than to say anything that might be considered derogatory to the House of Commons or offensive to any hon. Members personally. I very much hope that the House will accept my wholehearted apologies and I withdraw my remarks unreservedly.

Yours sincerely, Mancroft.

The hon. Member for South Shields (Mr. Ede) drew attention to the difficulties of dealing with the conduct of a Member of another place, who could not be called before the Committee of Privileges. If the matter were further pursued, a Committee would have to be appointed in order to inquire into it, and its Report sent to the Lords with a request for appropriate action by that House. He therefore recommended, with some reserve, that the apology be accepted.

The Leader of the House (Captain Crookshank) said that he thought that on the whole the House would be best advised to " let the matter fall, perhaps it might be considered, in contemptuous silence ", and pass to other business.

After a short debate, Mr. Speaker said that in order to regularise the proceedings, he had taken Mrs. Castle's speech as implying the usual Motion: " That the matter of the complaint be referred to the Committee of Privileges ".

Mrs. Castle observed that if she had not raised the matter the previous night, the wholehearted withdrawal by the noble Lord might not have been forthcoming. She thanked Lt.-Colonel Elliot and Captain Crookshank for their support, and said that she was prepared to withdraw her Motion.

Motion, by leave, withdrawn.

Contemptuous reference by a Member to an Oath of Allegiance taken by him.—On June 11, 1952, in the House of Commons, the

hon. member for Belfast, North (Lt.-Colonel H. M. Hyde), drew Mr. Speaker's attention to a report, in the *Belfast News-Letter* of June 10, of a remark attributed to the hon. Member for Mid-Ulster (Mr. M. O'Neill) at a meeting of the Omagh Rural District Council. At that Meeting Mr. O'Neill had moved an amendment to a proposed Resolution expressing loyalty to Her Majesty, whom he had described as a " foreign ruler ". The report of the newspaper continued as follows:

Mr. C. S. Beatty, who proposed the Resolution, said Mr. O'Neill and Mr. M'Cullough had already signed declarations of allegiance to the Queen. He supposed these were to be treated as scraps of paper.

MR. O'NEILL: That is what they certainly are.

MR. BEATTY: You signed a declaration of allegiance to draw Her Majesty's money. I do not know what sort of conscience you have.

Lt.-Colonel Hyde contended that the description of the Oath of Allegiance as a " scrap of paper " amounted to a contempt, since it imputed that a declaration or oath was a meaningless formality, and was calculated to bring the proceedings of the House into public disrepute. He therefore asked for Mr. Speaker's guidance, since the matter was covered by no precedent.

Copy of newspaper handed in.

Mr. Speaker said that the report had been accurately read by the hon. Member, and therefore did not need to be read again by the Clerk.

Mr. O'Neill said that the Resolution to which he had proposed an amendment was not a Resolution of loyalty to the Queen but of ongratulation to Sir Basil Brooke upon an honour conferred upon im by the Queen. The declaration which he had described as a scrap of paper " was one which all holders of seats in local government bodies in Northern Ireland were compelled to make. On attempting to develop the political implications of this declaration he was called to order by Mr. Speaker.

Mr. Speaker, while agreeing with Lt.-Colonel Hyde that there was no strict precedent, observed that on January 28, 1885, the Court of Appeal had ruled that if Mr. Bradlaugh took his seat and voted as a Member, having gone through the form of making and subscribing the Oath, which, he had previously admitted, had no binding effect upon his conscience, he would be liable upon information at the suit of the Attorney-General to the penalty imposed by the Parliamentary Oaths Act, 1866, Section 5. He therefore Ruled that this was a matter of law, and that there was no *prima facie* case of breach of privilege.

Question asked in another House.—On July 22, 1952,[4] the hon. Member for Bristol, South-East (Mr. Benn), asked for Mr. Speaker's guidance on a matter concerning the good relations between the 2 Houses. It arose out of the decision of the South African Government to arrest a Mr. Sachs, the General Secretary of the Garment

Workers' Union, as a result of which a letter of protest had been compiled and signed by 108 Members of the Commons and 8 Peers. A Question in the name of Lord Barnby had since appeared on the Order Paper of the House of Lords, as follows:

To ask Her Majesty's Government whether they have noted the protests of certain Socialist Members of Parliament in this country against the arrest of Mr. Sachs, the Trades Union Leader in South Africa, by the direction of the Government of the Union of South Africa, and whether they do not consider these protests a serious attempt to intervene in matters concerning the internal policy of another Commonwealth country.

A Motion had since appeared on the House of Commons Order Paper in the following terms:

That this House most strongly protests against the action of the South African Government in the proceedings which it has taken and is taking against Mr. E. S. Sachs, the General Secretary of the Garment Workers' Union, and other prominent trade union leaders; and regards this as a deliberate attempt to undermine trade unionism and political freedom in South Africa.

If the action of Members of the House of Commons were criticised in debate when the Question came to be answered in the Lords, it might well constitute an infringement of the rights of the Commons and contravene the Ninth Article of the Bill of Rights, which stated that " . . . the freedom of speech and debates or proceedings in Parliament ought not to be . . . questioned in any court or place out of Parliament ", since the word " proceedings " included the giving of notices of Motions. The original protest of the Members had been so nearly related to matters pending or expected to be brought before the House that they formed part of the Business of the House.

Mr. Speaker said that the proposed Question did not refer to actions of the House and could not in any case refer to the Motion on the Commons Order Paper, which had been put down later than the Question. The matter was entirely one for the other House to consider in the light of the maintenance of good relations between the 2 Houses.

Mr. Benn asked if Mr. Speaker agreed that a debate on the Question would constitute a discourtesy to one House by Members of another.

Mr. Speaker said that since the original manifesto had been signed by Members of both Houses, the Question could not be construed as an attack by one House upon the other.

It may be noted that on the following day the terms of Lord Barnby's Question as it appeared on the Order Paper of the House of Lords (p. 717) were amended so as to refer to " certain Socialist Members of *both Houses* of Parliament ".

Contempt of Court and communications to Members.—The case of Mr. Pritt's telegram from Kenya, which gave rise to discussion in the House of Commons on December 18 and 19, 1952, and

January 20, 1953, is the subject of a separate article (XIX) by Sir Frederic Metcalfe, K.C.B., the Clerk of the House of Commons.

2. At Delhi (House of the People)*

Arrest of Members.—(1) On May 27, 1952, Shri N. C. Chatterjee raised the following Question of privilege in the House of the People:

That a breach of privilege of the House of the People has been committed by the arrest of Shri V. G. Deshpande, M.P., by the Police in the early hours of the morning on 27th May, 1952, when the House is in session and the House has been deprived of the contribution that the said Member would have made by participating in the deliberations.

Under Rule 214 of the Rules of Procedure, the Speaker referred the Question to the Committee of Privileges for examination and report.[5]

On May 28, 1952, the Speaker read out in the House a letter dated May 27, 1952, received by him at 4.45 p.m. on the same day from the District Magistrate of Delhi, communicating the information of the arrest of Shri V. G. Deshpande.[6]

The Committee held 6 sittings from May 28 to June 28, 1952, and addressed itself to the following 2 Questions arising out of the case:

(i) Whether the arrest of Shri V. G. Deshpande under the Preventive Detention Act, 1950, constitutes a breach of privilege, and

(ii) Whether the intimation of his arrest to the Speaker by the District Magistrate was sent in time.

The Committee heard Shri N. C. Chatterjee on May 30, 1952, on the Question of law of privilege involved in the case. On June 4, 1952, it heard Shri V. G. Deshpande (who had in the meantime been released) and the District Magistrate of Delhi. The evidence of both these persons was taken on oath.

With regard to the first point to which the Committee addressed itself, it was of opinion that privilege did not extend to arrests and detentions under the Preventive Detention Act, 1950. The Committee pointed out that the Constitution of India expressly authorised preventive detention and that it also contemplated that laws relating to preventive detention might be in operation even during peace-time. The Committee thought that preventive detention was in its essence as much a penal measure as any arrest by the police, or under an order of a Magistrate, on suspicion of the commission of a crime, or in course of or as a result of the proceedings under the relevant provisions of the Criminal Procedure Code, and no substantial distinction could be drawn on the ground that preventive detention might proceed merely on suspicion and not on the basis of the commission of an offence on the part of the person directed to be detained.

On the second point, the Committee observed that, while it was recognised that intimation of the arrest of a Member should be given promptly, it was not possible to lay down any hard-and-fast rule on the subject, as much would depend upon the surrounding

* Contributed by the Secretary of the House of the People.—[ED.]

circumstances. Taking all the circumstances of the case into consideration, the Committee came to the conclusion that the intimation of the arrest of Shri V. G. Deshpande was sent to the Speaker with as much expedition as possible and there was, therefore, no breach of privilege of the House.

The Report of the Committee was presented to the House on July 9, 1952, by the Chairman of the Committee.[7]

Four members of the Committee, who found themselves unable to agree with the conclusions reached in the Report, expressed their views in a separate note. These members were of opinion that there was delay on the part of the District Magistrate in informing the Speaker of the arrest, which, coupled with his failure to attach sufficient importance to the matter, constituted a breach of privilege of the House. They rejected the evidence of the District Magistrate to the effect that Shri V. G. Deshpande was responsible for the incidents occurring in Delhi before May 26, 1952, although he was away from Delhi from May 20 to 26, 1952. They, therefore, held that in giving what they thought such misleading information to the Speaker of the House, a breach of privilege had been committed.

The Report of the Committee, since its presentation to the House, has not so far been discussed in the House.

(2) On June 13, 1952, Shri K. Ananda Nambiar raised the following Question of privilege in the House of the People:

> That Shri Dasaratha Deb, a Member of this House has been arrested on June 12, 1952 at Agartala, Tripura State, by the Agartala Police and such an arrest of the Member of this House, particularly while it is in session, is a serious breach of privilege of the Honourable Member and of this House.

As the facts of the case were not clear, the Minister of Home Affairs (Dr. Kailas Nath Katju) undertook to make inquiries and to report the facts to the House at the next sitting. The Speaker thereupon postponed the consideration of the Question accordingly.[8]

At the next sitting of the House, on June 16, 1952, the Minister of Home Affairs stated that from a telegram received by him from the Chief Commissioner of Tripura it appeared that Shri Dasaratha Deb was examined by the police and at their request attended the police office at 8 a.m. on June 12 in connection with a pending kidnapping case in which the police suspected his complicity. After the interrogation was over, he was forthwith formally arrested by the police and immediately taken to the Sub-Divisional Magistrate, who released him on bail at 10.30 a.m. on the same day.

The Speaker considered that for howsoever small a period the arrest might be, the communication of the fact of arrest should be given by the Magistrate to the Speaker. In the absence of such a communication, he was clear that there was a *prima facie* case for referring the matter to the Committee of Privileges. He accordingly referred the Question to the Committee on June 16, 1952.[9]

On June 27, 1952, the Speaker read out in the House a letter

dated June 24 received by him from the Sub-Divisional Magistrate of Agartala, communicating the information of the arrest of Shri Dasaratha Deb. As a Question of privilege relating to this matter had already been referred to the Committee of Privileges, the Speaker referred this communication also to the Committee.[10]

The Committee held 2 sittings. It considered a written memorandum on the facts of the case, submitted by Shri Deb in response to the Committee's directions. Shri Deb did not wish to be heard in person.

The Committee considered the question whether it was necessary to give information to the Speaker in case a Member was arrested in the course of administration of criminal justice and immediately released on bail. In view of the practice in the House of Commons that " the duty of the Magistrate to inform the House arose only when he had committed a criminal to prison and when he was detained there without bail ", the Committee came to the conclusion that on the facts of the present case there was no such duty involved on the part of the Magistrate and that in the circumstances there was no breach of privilege of the House.

The Report of the Committee was presented to the House on July 23, 1952, by the Chairman of the Committee.[11]

The Report has not been discussed by the House since.

Allegations concerning Speech of a Member.—On June 11, 1952, during the discussion in the House of the People on the Demand for Grants relating to the Ministry of Defence, while referring to the speech of Shrimati Renu Chakravartty, M.P., delivered on the previous day, Dr. Satyanarain Sinha, M.P., stated that her speech followed the general line of an article written by I. Lemin which had appeared in a magazine in the month of February. The Chair called him to order and observed that he should not make personal allegations of that type as any Member was entitled to adopt the arguments of any other person. Later, when Dr. Sinha referred to a map in which Kashmir was shown as British territory, the Chair ruled that if any Member referred to any document or read extracts from it on the floor of the House, he should place it on the Table of the House.[12]

In pursuance of the Ruling of the Chair on the previous day, Dr. Sinha laid the following documents on the Table of the House on June 12, 1952:

(i) A typed copy of Draft Secret Protocol.
(ii) Extracts of certain articles from the *Current Digest of the Soviet Press.*
(iii) A Soviet map published in 1950 showing Kashmir as British.[13]

On June 23, 1952, the Speaker referred to the Committee of Privileges the following Question of privilege which was raised by Shri A. K. Gopalan:

(i) That the Statement made by Dr. Satyanarain Sinha, M.P., in the course of his speech in the House on the 11th June, 1952, was calculated to lower the prestige of Shrimati Renu Chakravartty, M.P., and thereby lower the prestige of the House in the eyes of the public; and

(ii) That certain documents which were placed on the Table of the House by Dr. Satyanarain Sinha, M.P., on the 12th June, 1952, were false, fabricated and forged.

The Speaker also directed that the Committee should consider the question of the standard of conduct expected of a Member of the House.[14]

The Committee held 2 sittings. In accordance with the direction of the Committee, Dr. Sinha produced the originals of the copies of documents laid by him on the Table of the House, namely, 3 issues (dated April 26, May 3 and 12, 1952) of the magazine *Current Digest of the Soviet Press*, and one book in German entitled *Zwischen Hitler und Stalin* which contained a copy of the Secret Protocol.

In connection with the first point raised in the Question of privilege, the Committee compared the speech of Shrimati Renu Chakravartty with the article by I. Lemin, published in the *Current Digest of the Soviet Press* of April 26, 1952, and thought that, though there appeared to be some similarity in approach, it was incorrect to say that Shrimati Chakravartty's speech was " word for word " or " in general line " after Lemin's article. The Committee, however, considered that the words used by Dr. Sinha in his speech on June 11, 1952, did not appear to reflect upon Shrimati Chakravartty nor did they lead to the assumption that the former wanted to create an impression in the minds of Members of the House or of the public that the latter's speech was tutored.

As regards the second point, the Committee found on investigation that the documents laid on the Table of the House by Dr. Sinha were copies from the 3 issues of a regular printed magazine and a German book which were available for the use of the public in general, and therefore Dr. Sinha could not be said to have " forged or fabricated " the documents.

The Committee accordingly came to the conclusion that there was no Question of breach of privilege involved in this case.

On the Question of the standard expected of a Member of the House, the Committee considered that both Dr. Satyanarain Sinha and Shri A. K. Gopalan had acted on the spur of the moment and on inadequate appreciation of the issues involved. The Committee felt that it would be wrong for Members to take advantage of the protection afforded to speeches in the House and to level charges not founded on facts.

The Report was presented to the House on December 12, 1952, by the Chairman of the Committee and it has not been discussed by the House since.[15]

Complaint against a Newspaper.—On July 12, 1952, the Speaker referred the following Question of privilege, raised by Shri B. Shiva Rao, to the Committee of Privileges for investigation and report:

That a breach of privilege of the House has been committed by the publication of the following passages in the Delhi edition of the *Times of India* of the 5th July, 1952:

> " About Dr. Sinha's allegations in Parliament Mr. Sundarayya stated that the documents in question were false, fraudulent and forged and the Privileges Committee of Parliament had now almost completed its investigations and Dr. Sinha was finding it difficult to get out of the situation ".[18]

This case arose out of a statement alleged to have been made at a meeting at Moga by Shri P. Sundarayya, Member of the Council of States, regarding the proceedings of the Committee of Privileges of the House of the People concerning certain documents laid on the Table of the House by Dr. Satyanarain Sinha.

On the direction of the Committee, the Editor of the *Times of India* and Shri P. Sundarayya made their submissions in writing to the Committee.

In reply the *Times of India* forwarded cuttings from several other newspapers which had carried the news in identical terms. The *Times of India* also forwarded a statement from their correspondent in Moga, Shri Gurnam Singh Tir, who testified that the statement which appeared in the *Times of India* was in fact made by Shri Sundarayya, and in support of his contention enclosed written statements from 3 other individuals (one of whom was a representative of the Press Trust of India at Ludhiana) who claimed that they were all present at the meeting.

Shri Sundarayya, in his reply, contended that the statement which had appeared in the *Times of India* was " grossly distorted and false ", and that what he said at the meeting was as follows:

> The question was referred to the Privileges Committee and it will be going into the whole matter. Now it will be for Mr. Sinha to prove his allegations which it will be a very hard job for him to do.

With the evidence before them, the Committee found that since it was a question of 2 different versions, one given by Shri Sundarayya and the other by the correspondent of the *Times of India*, it was difficult for the Committee to base its decision on what actually was said at an informal press conference, unless a verbatim and authorised record had been kept, which would have been absolutely conclusive on the matter. The Committee also noted the fact that the correspondent of the *Times of India* represented other newspapers as well in which almost identical reports had appeared. The report in all these newspapers, therefore, appeared to have emanated from the same correspondent.

The Committee also found that as the Committee of Privileges on the Question concerning the genuineness of certain papers laid on the Table of the House by Dr. Satyanarain Sinha had not even met to consider the matter when Shri Sundarayya was reported to have made the statement in question, it was not a case of inaccurate reporting of the *proceedings* of the Committee but of making or

publishing a factually incorrect statement. The Committee pointed out in this connection that no person, including a Member of Parliament or press, should without proper verification make or publish a statement or comment about any matter which was under consideration or investigation by a Committee of Parliament.

The Committee, however, recommended that in the present case no further action was called for.

The Report of the Committee was presented to the House on December 12, 1952, by the Chairman of the Committee and it has not been discussed by the House so far.[17]

[1] 499 *Hans.*, cc. 880-1. [2] *Ibid.*, 891-8.
[3] 502 *Hans.*, cc. 208-12. [4] 504 *Hans.*, cc. 277-9.
[5] H.P. Deb., Part II, dated May 27, 1952, Cols. 621-2.
[6] H.P. Deb., Part II, dated May 28, 1952, Cols. 701-2.
[7] H.P. Deb., Part II, dated July 9, 1952, Col. 3443.
[8] H.P. Deb., Part II, dated June 13, 1952, Cols. 1681-3.
[9] H.P. Deb., Part II, dated June 16, 1952, Cols. 1781-3.
[10] H.P. Deb., Part II, dated June 27, 1952, Cols. 2613-15.
[11] H.P. Deb., Part II, dated July 23, 1952, Col. 4425.
[12] H.P. Deb., Part II, dated June 11, 1952, Cols. 1546-9.
[13] H.P. Deb., Part II, dated June 12, 1952, Cols. 1605-6.
[14] H.P. Deb., Part II, dated June 23, 1952, Cols. 2231-5.
[15] H.P. Deb., Part II, dated December 12, 1952, Cols. 2123-4.
[16] H.P. Deb., Part II, dated July 12, 1952, Cols. 3675-8.
[17] H.P. Deb., Part II, dated December 12, 1952, Cols. 2123-4.

XIX. PRIVILEGE: SOME ASPECTS OF THE CASE OF MR. PRITT IN KENYA

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

Col. Wigg, M.P., on December 18,[1] 1952, and December 19,[2] complained of the proceedings taken in the Supreme Court of Kenya against Mr. Pritt for alleged contempt of Court.

Col. Wigg and 3 other Members had been raising, by Questions and in debate, the conduct of proceedings in the Magistrate's Court at Kapenguria, where defendants were being tried on charges of managing Mau Mau and Mr. Pritt was leading counsel for the defence. To obtain further information the 4 M.P.s sent a cable to Mr. Pritt, who replied in a lengthy cable containing the words " It amounts in all to a denial of justice ".

The " tape-machine " in the House of Commons announced on December 18 that the Kapenguria Magistrate had adjourned the case for 15 days and sent a record of the proceedings to the Supreme Court at Nairobi for them to consider whether Mr. Pritt in using the above-mentioned words in his cable to the M.P.s had been guilty of contempt of Court.

Col. Wigg therefore raised as " a breach of privilege " the taking of proceedings for contempt of Court against Mr. Pritt in respect of his cable, arguing[3] that Mr. Pritt had been placed in jeopardy as

a result of supplying information asked for by himself and his friends in the course of their parliamentary duties.

On that day, December 19, the Attorney-General said that proceedings had *not* been taken in the Supreme Court against Mr. Pritt and it was quite uncertain whether they would be taken. Mr. Speaker then Ruled that as no action had been taken, and he was not entitled to assume that action would be taken, he did not think that a *prima facie* case was established.

There the matter ended for that day, and the House adjourned over Christmas.

In Kenya, however, on December 29 proceedings were started in the Supreme Court against Mr. Pritt " for his contempt of the Court of the Resident Magistrate at Kapenguria . . . in publishing on or about the 12th day of December, 1952, to the *East Africa Standard*" the allegation that " It amounts in all to a denial of justice ".

The Chief Justice at the conclusion of the argument stated: " In what was said, there is nothing calculated to interfere with the ordinary course of justice in the criminal case at Kapenguria or to prejudice a fair trial ". He therefore Ruled that as it had not had such an effect there was no contempt, and he awarded costs against the Crown.

On January 20, 1953, when the House met again after the Christmas adjournment, Col. Wigg again raised the case as a matter of privilege.[4] He argued that Mr. Pritt had indeed been placed in jeopardy by the Attorney-General of Kenya instituting proceedings against him for contempt of Court. Although these proceedings were decided on, at least as far as the terms of the Motion were concerned, on the issue of the publication to the *East Africa Standard* of Mr. Pritt's cable, nevertheless—so Col. Wigg argued[5]—the Attorney-General's argument in the Supreme Court was directed to the cable of the 4 Members, and he insisted that Mr. Pritt should be asked to withdraw his statements " word by word, syllable by syllable ".

Mr. Speaker, Ruling on the case, said:

> I have read a copy of the official report of the proceedings in the Supreme Court of Kenya against Mr. Pritt, from which it appears that these proceedings were taken solely on the ground of his action in publishing certain statements in the *East Africa Standard*, a newspaper circulating in the Colony. That being so I cannot rule that the taking of these proceedings against Mr. Pritt involves any *prima facie* case of Privilege which would justify me in giving this matter precedence over the Orders of the Day. If hon. Members desire this matter to be further investigated, they should put down a Motion for the consideration of the House, but it cannot be dealt with today.[6]

It will be seen that in its final result the case of Mr. Pritt in Kenya added nothing to the history of the privileges of the House of Commons. But in its early stages there seemed to be a risk of 2 complications: (1) a conflict between this House and the Courts, and (2) a difficult question of how far the jurisdiction of the House of Commons may reach within the British Commonwealth of Nations.

(1) If (as was first announced on the "tape" on December 18) it had been only in respect of his cable in reply to Col. Wigg that proceedings were taken against Mr. Pritt, and if this House had come to the decision that these proceedings constituted a breach of privilege (by victimising a person who supplied information asked for by a Member in the course of his parliamentary duties) then there could have been a conflict between the Supreme Court in Kenya and this House.*

(2) If such a conflict had occurred the question must have arisen whether the House of Commons can exercise jurisdiction outside this country and in the Colony of Kenya. What steps the House could take to protect a person who was being penalised by an over-sea Court has not yet been settled, for in the circumstances the threatened conflict did not arise.

The facts of the case were that Mr. Rule had in the letter to his M.P. accused a well-known police officer in the constituency of criminal conduct. The police officer prosecuted Rule for criminal libel and got him convicted and fined. This was reversed on appeal.

* With regard to the possibility of the House deciding those events to be a breach of privilege, it is necessary to add a word of caution. If it had so decided, there would have been a new application of the doctrine of privilege in circumstances differing widely from those obtaining in the case of *Rex* v. *Rule*. In that case the Court of Appeal held that a letter from a constituent to his M.P. was privileged even though it contained libellous charges against a police officer in that constituency. This was quite a narrow point, for it is limited to the one constituency, its M.P., and a constituent who asked the M.P. to investigate what he thought were scandals in the constituency.

[1] 508 *Hans.*, cc. 1777-9. [2] *Ibid.*, cc. 1798-808. [3] *Ibid.*, c. 1802.
[4] 509 *Hans.*, cc. 43-50. [5] *Ibid.*, c. 47. [6] *Ibid.*, c. 50.

XX. THREE PRIVILEGES ORDINANCES

By the Editors

We have received copies of the following Ordinances dealing with the privileges and immunities of Trinidad and Tobago, Kenya and the Sudan:

(1) The Legislative Council (Powers and Privileges) Ordinance, 1953, of Trinidad and Tobago;
(2) The Legislative Council (Powers and Privileges) Ordinance, 1952, of Kenya.
(3) The Privileges Ordinance, 1951, of the Sudan.

These 3 Ordinances will be of interest to members of the Society in that they represent an attempt to set out, more or less completely, a code of parliamentary privilege and immunity as it exists today in Parliaments of the English tradition. Similar Acts and Ordinances have been summarised in previous issues of the JOURNAL, as follows:

(*a*) Ceylon (State Council Powers and Privileges Ordinance, No. 27 of 1942), Vol. X, p. 76.

(*b*) Union of South Africa (Powers and Privileges of Provincial Councils Bill, 1948), Vol. XVII, p. 49.

The arrival of these 3 Ordinances, however, furnishes an occasion for dealing with the matter in somewhat greater detail.

In the United Kingdom the practice of the 2 Houses varies slightly in matters of privilege. The Lords have made an attempt to set out certain of their privileges in Standing Orders; but the list there included is by no means complete. In the House of Commons, Questions of privilege and parliamentary immunity are dealt with *ad hoc* by the Committee of Privileges; though of course there does exist, in works of reference and in the files and brains of the clerks, a great corpus of knowledge on the subject. Moreover, certain parts of the law of privilege, which have been the occasion of violent dispute in the past, have been set forth in the statute law. The position in the United Kingdom is further complicated by the fact that certain matters which are technically breaches of privilege, *e.g.*, the reporting by the press of proceedings in Parliament, are regularly tolerated, and indeed encouraged, by each House.

Arrest.—The most ancient parliamentary privilege is probably that of freedom from arrest. In its original form, it covered any attempt to molest, impede or detain Members of either House on their journeys to or from Parliament or during the session; but Members could, of course, always be arrested on a criminal charge or for refusing to give security for the peace. As the rule of law and order became more secure, this privilege found practical expression in the immunity of Members from civil arrest for debt. Now that such arrest has been abolished in the United Kingdom for about a century, the scope of this privilege is correspondingly reduced. It is probably for this reason that greater prominence is given in the Ordinances under discussion to immunity from arrest for debt, than to the more general immunity against any form of illegal detention or obstruction of Members. In the Kenya and Trinidad and Tobago Ordinances, the former immunity is given a whole section to itself, while in the case of the Sudan, it is provided for—along with freedom of speech—in the "principal Act" (the Executive Council and Legislative Assembly Ordinance, 1948) to which the Privileges Ordinance is intended to be supplementary. In all 3 Ordinances, on the other hand, the offence of obstructing, molesting or impeding a Member, or attempting to prevent his attendance, is dealt with in a sub-paragraph amongst "other offences".

Freedom of Speech.—Freedom of speech is guaranteed by Section 3 of the Kenya and Trinidad and Tobago Ordinances, and, in theSudan, by Section 46 of the Ordinance of 1948, as well as by Section 50 of the recently promulgated constitution (the Self-Government Statute).

Press Reports.—Section 25 of the Kenya Ordinance grants privilege to any extract from or abstract of any parliamentary paper or

report; but no specific privilege of immunity from suit for libel is given to the editor of any newspaper who, acting on the permission envisaged by Section 17 (4) of this Ordinance, sends his reporter into the Press Gallery and thereafter publishes, *bona fide* and without malice, a report based upon the notes taken by his own journalist. Such immunity is provided, on the other hand, by Section 10 (*f*) of the Trinidad and Tobago Ordinance and, partially, by Section 3 (2) (*e*) of the Sudan Ordinance. The latter, however, does not apparently envisage immunity for " fair comment ".

Disturbances.—Fairly drastic penalties are laid down in all 3 Ordinances for Members—and, of course, strangers—who cause, or create, or join in any disturbance which interrupts or is liable to interrupt the sitting. Presumably these penalties (which include imprisonment) are not intended to be applied to Members who give vent to their feelings in the ordinary course of Business !

Strangers.—It was for centuries the custom for both Houses in the United Kingdom—and, more particularly, the Commons—to hold their deliberations in private. This practice has, of course, given each House the power to exclude strangers; but this is now normally modified into a power to regulate the admission of strangers. Our 3 Ordinances show considerable variation on this point. The Sudan Ordinance grants the Speaker the right to permit the entry of strangers or order their ejection; but the power to regulate the behaviour of strangers within the building is apparently granted only by Standing Order. The Trinidad and Tobago Ordinance has 3 sections on the point—Section 5 provides that no stranger shall be entitled, as of right, to enter the precincts; Section 6 provides for the regulation of strangers by the Speaker; and Section 7, that the Speaker may at any time order strangers to withdraw. The Kenya Ordinance contains the same 3 sections.

Other Provisions.—Apart from this, all 3 Ordinances contain the usual provisions relating to witnesses' indemnity. The Kenya and Trinidad and Tobago Ordinances provide that the *Commons' Journals* shall be their formal authority on points of privilege, and the Kenya Ordinance includes provision for the compulsory production of papers, etc. All 3 Ordinances specifically forbid the offering or acceptance of bribes.

From these brief notes the reader may well have concluded that it can be no easy matter to produce a simple, short and complete code of privilege and immunity for a Parliament of the British type. It is, of course, probable that some at least of the provisions which have been noticed in this article as being excluded from one or other of these Ordinances are already contained in other enactments of the Legislatures concerned. But enough, at any rate, has been said to indicate that the application of privilege, even in the youngest Legislature, presents that degree of complexity and difficulty which seems inevitably to attend the subject.

XXI. MISCELLANEOUS NOTES

1. Constitutional

United Kingdom (Consolidation of Enactments).—The work of consolidation proceeded on the normal lines (JOURNAL, IX, 23) in 1952 with the consolidation of a number of minor enactments. The Chairman of the Joint Select Committee was Lord Llewellin. A task which had been in hand for a number of years, and had taxed the resources of the office of Parliamentary Counsel and of the Inland Revenue department, was brought to fruition in the consolidation of the law relating to income tax. It is recorded that the Consolidated Income Tax Act, which has 532 clauses and 25 schedules, and repeals in whole or in part 60 Acts of Parliament, broke the weighing machine in the Lord Chancellor's office. Another noteworthy work of consolidation was the Customs and Excise Bill. This was not a normal piece of consolidation, in that the amendments proposed to be made to the law were greater than could be passed under the Consolidation of Enactments (Procedure) Act, 1949. For this reason, and because it was of course largely concerned with the imposition of charges upon the people, the Bill was introduced in the House of Commons, and was referred by that House to a special Joint Committee, of which the Commons provided the Chairman. The Bill had previously been considered in draft by an Extra-Parliamentary Committee presided over by Lord Kennet. Over 200 Acts of Parliament, passed during more than 150 years, were consolidated in this Bill, which has 321 clauses and 12 schedules (174 *Hans.*, 1060, 175 *Hans.*, 186).

House of Lords (Reform).—In the debate on the Address, the Viscount Samuel raised the Question of reform of the House, which had figured in the Conservative Party's manifesto during the General Election; it had been said that an all-party conference would be summoned on the subject. Lord Samuel again raised the matter on a substantive Motion* on November 25. He recalled that in 1948 an all-party conference had been held at which agreement had been reached on the question of the composition of the House, and also on the question of its powers, with the exception of a difference of 3 months over the length of the " delaying powers". He did not regard this as a difference of principle, but rather one of degree. Even had the parties to the conference agreed, however, the matter would have had to be referred back to the main bodies of the political parties; and there a fresh disagreement would doubtless have arisen. It was the policy of some at least in the Labour Party to leave the House of Lords as it was, and hope that it would wither away; and

* Only a day or two before the debate, Lord Samuel had had an unstarred question down on the subject. This would have enabled a debate to take place, but would not have given Lord Samuel a right of reply. His substitution at very short notice of a motion for Papers for his question was the subject of a debate in the House on January 22, 1953.

the Conservative Peers at any rate would not on the other hand have been wholly happy to see the composition of the House so drastically altered. For his part, he would like to see women admitted to the House, and he thought that if the character of the Members of the House was what it should be, then the question of its formal powers was less important; its influence would derive from the authority of its members.

The Earl Jowitt, for the Labour Party, said that he and his party were anxious that the powers of the House should not be increased. He emphasised that the agreement reached in 1948 was only provisional, and that the matter would have had to be referred back to the parties. In defence of the present condition of the House, he mentioned that in 1946 and 1947, when the Labour Government was faced with a vast Conservative majority in the Lords, over 1,200 amendments had been made by the Lords to major Bills. Of these only 57 were rejected by the Commons. That, in his view, proved that the House as at present constituted worked extremely well. In the course of the debate a proposal was made that hereditary peers should be allowed to continue to sit in the House and to speak, but that their right of voting should not necessarily be, as as present, inherent. (This proposal was amplified in a debate initiated by the Marquess of Exeter on March 17, 1953, which will be noticed in Vol. XXII.)

In the view of the Marquess of Salisbury, the main constitutional function of the Lords was to be able to interpose a period of delay when the unwritten constitution of the country was in danger of being overturned by the first Chamber without the will of the people having been adequately ascertained. This was a role that the House was seldom called upon to play, but it was important that some adequate safeguard should be retained. In view of the Government's purpose to call a conference on the subject, he could not usefully say more at present. (179 *Hans.*, 95, 518.)

[The Life Peers Bill, introduced by the Viscount Simon and read a first time on December 10, will be treated of in Vol. XXII.]

Isle of Man (Constitutional).—On February 26, 1952, the following further Resolution was passed IN PRIVATE by the House of Keys:

That this House desires the Consultative and Finance Committee to represent it in conference with the Legislative Council and to make the following submissions:

(1) That having expressed their disapproval at the over-ruling of their wishes in the matter of the salaries of Chief Constable and Superintendent of Police, no further action be now taken to effect a reduction in these salaries, but that the question of the Chief Constable's pension should be submitted to the Keys for consideration with all relevant correspondence.

(2) That in the Developments in the Constitution now under consideration with the Imperial Government, the House desires the ultimate control of the Reserved Services to be vested in the Lieutenant-Governor acting in consultation with his Executive Council.

(3) That the question of having a Finance Committee of Tynwald or of the

Executive Council should be further explored with the Legislative Council, with a view to submitting a positive recommendation to the House.

(4) That until a satisfactory solution has been found to the problem of securing to the democratic element in Government adequate financial control, the Consultative and Finance Committee of the Keys should continue to exist.

(5) That if agreement can be reached with the Legislative Council on the matters contained in this Resolution, the Deputation to wait upon the Home Secretary should be appointed by Tynwald, but that if agreement is not reached, the House should appoint its own Deputation. (*See also* JOURNAL, Vols. VII, 43; XI-XII, 137; XVIII, 278; XX, 135.)

Union of South Africa : The High Court of Parliament Act, 1952. (No. 35 of 1952).

Provisions of the Act :

In terms of the Act, the constitution and functions of the High Court of Parliament are that:

(i) Any judgment or order of the Appellate Division of the Supreme Court declaring invalid any provision of any Act of Parliament or declaring that any Act is not an Act of Parliament, or refusing to give effect to any provision of an Act, is subject to review by the High Court of Parliament. (Section 2.)

(ii) Every Senator and every Member of the House of Assembly is a member of the Court.

The Governor-General appoints one of the members of the Court as its President.

Fifty members form a quorum.

The Clerk of the House of Assembly is *ex officio* registrar of the Court. (S. 3.)

(iii) The Court holds its sittings in the Chamber of the House of Assembly or such other place as determined by the Governor-General. (S. 4.)

(iv) A Minister of State must lodge with the President an application for the review by the Court of the judgment or Order within a period specified. (S. 5.)

(v) Within 30 days after such application has been lodged the President shall refer it to a Judicial Committee of the Court consisting of 10 members appointed by him.

Four members form a quorum.

The Clerk of the Senate is *ex officio* Secretary of the Committee.

A person who was a party in the case under review may lodge with the Secretary written representations relative to the application for review for the consideration of the Committee and the Court, and such person may appear either in person or by counsel before the Committee.

The Committee, after consideration of the record of the proceedings and the reasons given by the judges of the Appellate Division and of the representations, makes a report to the Court and may also make recommendations. (S. 6.)

(vi) The President thereupon convenes a sitting of the Court for the consideration of the Report and recommendations of the Committee. (S. 7.)

(vii) The Court may, after consideration of the Report and recommendations of the Committee, on any legal ground by Resolution confirm, vary or set aside any judgment or order of the Appellate Division of the Supreme Court.

A decision of the Court is final and binding and must be executed as if it were a decision of the Provincial or Local Division of the Supreme Court in which the matter was originally heard. (S. 8.)

(viii) The Governor-General may make Rules as to the order and conduct of the proceedings of the Court or a Judicial Committee thereof. Such Rules may incorporate with or without amendment any Rule or Order made by the House of Assembly. (S. 9.)

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

Motion for Leave.—On April 22 (1952 VOTES, 518; 78 *Assem. Hans.*, 4108, 9), the Minister of the Interior (Dr. the Hon. T. E. Dönges) moved for leave to introduce a Bill:

to establish a High Court of Parliament and to define the jurisdiction and to provide for matters incidental thereto.

Whereupon the Leader of the Opposition (the Hon. J. G. N. Strauss) moved to omit all words after " That " and to substitute:

this House declines to grant leave for the introduction of a Bill to establish a High Court of Parliament and to define its jurisdiction and to provide for matters incidental thereto, on the ground that such Bill is calculated to undermine the independence of the Law Courts and to smash the Constitution, which is the basis of our Union, and the guarantee of our liberties.

Debate ensued.

Business was suspended from 6.30 to 8.0 p.m., the debate being continued until 10.25 p.m., when it was interrupted under Sessional Order and adjourned until the following day.

Debate was resumed on April 23 (1952 VOTES, 523-529; 78 *Assem. Hans.*, 4203.) and upon Mr. Speaker putting the Question: " That all words after ' That ' proposed to be omitted, stand part of the Question ", the Question was affirmed (Ayes, 71; Noes, 58) and the amendment dropped.

The original Question was then put and agreed to (Ayes, 71; Noes, 58).

First Reading.—The Minister thereupon brought up the Bill and the Question: " That the Bill be now read a First Time " was put and agreed to (Ayes, 69; Noes, 57).

The Minister then moved: " That the Bill be read a Second Time on Wednesday, 30th April ".

After the suspension of Business from 6.40 to 8.0 p.m., the Leader

of the Opposition moved, to omit: " 30th April " and to substitute " 7th May ".

After discussion, the Closure was moved and agreed to (Ayes, 63; Noes, 47).

Mr. Speaker then put the Question: " That the words ' 30th April ' proposed to be omitted stand part of the Question ", which was put and agreed to (Ayes, 63; Noes, 47).

The Question was accordingly affirmed, the amendment dropped and the main Question was then put and agreed to.

On April 29 (1952 VOTES, 554), the Governor-General's recommendation was announced in respect of the incidental appropriation contemplated in the Bill.

Second Reading.—On April 30 (1952 VOTES, 562; 78 *Assem. Hans.*, 4668), the Minister moved: " That the Bill be now read a Second Time ", whereupon the Leader of the Opposition, on a Question of Order, asked Mr. Speaker:

Whether the proposed Bill does not in terms of S. 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 amend S. 152 of the South Africa Act; and whether, therefore, the motion that the Bill be read a Second Time should not be disallowed.

After discussion, Mr. Speaker stated that he would give a considered Ruling on the question of order at a later stage, and debate was adjourned until tomorrow.

Speaker's Ruling.—On May 2 (1952 VOTES, 575; 78 *Assem. Hans.*, 4863), Mr. Speaker stated that:

On Wednesday last when the honourable the Minister of the Interior was called upon to move the Second Reading of the High Court of Parliament Bill, the honourable the Leader of the Opposition, on a question of order, asked me:

Whether the proposed Bill does not in terms of S. 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 amend S. 152 of the South Africa Act; and whether, therefore, the motion that the Bill be read a second time should not be disallowed.

The honourable the Leader of the Opposition and the honourable Members for Johannesburg (City) and Brakpan addressed me at considerable length on the continued validity of the entrenched clauses of the South Africa Act as a result of the changed position brought about by the decision of the Appellate Division of the Supreme Court in March of this year, reversing its previous decision in the *Ndlwana Case* in 1937.

On the assumption that the Bill constitutes a breach of the entrenched clauses, honourable Members furthermore appealed to me to be guided by the later decision of the Appellate Division in accordance with the maxim *stare decisis*.

The Bill before the House in clear and concise terms provides for the establishment and constitution of a High Court of Parliament and defines its jurisdiction.

In the question of order, however, it is asserted that the Bill:

"... embodies, as a principle thereof, provisions which amend S. 152 of the South Africa Act,"

but my difficulty is that not one of the honourable Members who spoke in support of the question of order, advanced any cogent argument to prove this assertion.

It was also stated *inter alia* that " the expressed and avowed intention of this measure is to get Parliament as ordinarily constituted to amend the entrenched provisions of the South Africa Act ", but there was no attempt to deal specifically with the provisions of the Bill itself, or to indicate from an analysis of such provisions in what respect they actually " amend S. 152 of the South Africa Act ".

I have carefully examined the entrenched clauses of the South Africa Act and in particular S. 152, but for the purposes of deciding upon the question of order and whether I am to disallow the motion of the honourable the Minister, I am unable to find that a case has been made out for holding that the provisions of the Bill establishing such a Court are in conflict with the entrenched clauses. Nor do I think that anyone can seriously contend that Parliament, which by S. 59 of the South Africa Act:

"... shall have full power to make laws for the peace, order and good government of the Union ",

does not have the power by ordinary procedure to pass legislation for changing the administration of justice or for establishing or disestablishing any court of law.

If I were now to attempt to deny this House the right to legislate in such matters, I would be frustrating it in the exercise of its undoubted rights.

In these circumstances I am not prepared to disallow the motion before the house.

Upon the resumption of debate on May 5 (1952 VOTES, 581; 78 *Assem. Hans.*, 4911), the Leader of the Opposition to the Question " That the Bill be now read a Second Time ", moved to omit " now " and to add at the end " this day 6 months ".

After the suspension of Business from 6.30 to 8.0 p.m., debate continued until the interruption of Business under Sessional Order at 10.26 p.m.

On May 6 (1952 VOTES, 587; 78 *Assem. Hans.*, 5022), debate was resumed and continued, with the suspension of Business from 6.30 to 8.0 p.m., until 10.26 when debate was adjourned until the following day.

On May 7 (1952 VOTES, 592-5; 78 *Assem. Hans.*, 5121), the Minister of Finance (Hon. N. C. Havenga) moved:

That the proceedings on the motion for the Second Reading of the High Court of Parliament Bill, if under consideration at twenty-five minutes past Ten o'clock p.m., to-day, be not interrupted under the Sessional Order adopted on the 31st January

which was agreed to (Ayes, 80; Noes, 60) and the debate on the Second Reading of the Bill was resumed until the suspension of Business from 6.30 to 8.0 p.m., when debate was again resumed.

At midnight the same day, after the Acting Speaker had called the attention of the House to the irrelevance and repetition of argument of two hon. Members, he directed them to discontinue their speeches.

Mr. Speaker then put the Question: " That the word 'now' proposed to be omitted, stand part of the Question " which was agreed to (Ayes, 79; Noes, 65) upon which the amendment dropped and the Bill passed 2 *R.* at 8.0 p.m., on May 8, the *C.W.H.* stage being set down for Monday.

C.W.H.—On the Order of the Day being read on May 12 (1952 VOTES, 609; 79 *Assem. Hans.*, 5579), the House went into Committee on the Bill, and the Minister moved: " That the following be a new Clause 1 of the Bill ":

1. In this Act, unless the context otherwise indicates, " Act of Parliament " means any instrument which has at any time since the eleventh day of December, 1931, been enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa in terms of S. 67 of the South Africa Act, 1909, or which may at any time hereafter be so enrolled, by virtue of the fact that it purports to be an Act of Parliament, and which purports to be enacted by the King, the Senate and the House of Assembly, whether it purports to have been passed by a joint sitting of the Senate and the House of Assembly or by the Senate and the House of Assembly in separate sittings, and irrespective of the subject matter thereof.

which was agreed to (Ayes, 78; Noes, 59).

Clause 2 of the Bill was then put and agreed to (Ayes, 78; Noes, 59). On Clause 3, the Minister moved to omit sub-section (7) and substitute the following sub-section:

(7) (*a*) No member of the Court shall vote or take part in the discussion of any matter before the Court or a Judicial Committee:

(i) in which he has a direct pecuniary interest; or

(ii) which relates to an application for the review of a judgment or order given or made in proceedings to which he was a party otherwise than *nomine officii*.

(*b*) No member of the Court shall be disqualified from sitting as a member of the Court or a Judicial Committee by reason of the fact that he participated in the proceedings of Parliament in his capacity as a Senator or a member of the House of Assembly during the passing of the Act of Parliament which forms the subject matter of the judgment or order under review.

Sub-clause (7) was then put and negatived and the proposed new sub-clause (7) put and agreed to (Ayes, 78; Noes, 59).

Clause 3, as amended was then put and agreed to (Ayes, 78; Noes, 59).

Clauses 4, 5, 6 and 7, as printed were then successively put and agreed to, the voting in each case being (Ayes, 78; Noes, 59).

On Clause 8, the Minister moved: in line 75 after " Committee " to insert " on any ground " which was agreed to (Ayes, 78; Noes, 59) and the Clause as amended was put and agreed to (Ayes, 78; Noes, 59).

Clause 9 was then put and agreed to (Ayes, 78; Noes, 59).

On the consideration of Clause 10, an hon. Member moved in line 28 after " High " to insert " and Mighty " which amendment the Chairman said he was unable to accept, it being of a frivolous nature.

Clause 10 and the title, both as printed, were then put and agreed to, the voting in each case being (Ayes, 78; Noes, 59) and the Chairman was directed to report the Bill with amendments.

Upon the Chairman so reporting, as there was definite objection to the amendments being "now" considered, the Report was set down for the following day.

Report Stage.—The amendments were considered on May 13 (1952 VOTES, 631; 79 *Assem. Hans.* 5672), when Mr. Speaker put the omission of Clause 1, which was agreed to (Ayes, 80; Noes, 58).

New Clause 1 and the amendments in Clauses 3 and 8 were then respectively put and agreed to, the voting in each case, as well as on the Question: "That the Bill as amended, be adopted" being: (Ayes, 80; Noes, 58), and the Third Reading set down for the morrow.

Third Reading.—When the Question was put on May 14 (1952 VOTES, 644; 79 *Assem. Hans.* 5776)—"That the Bill be now read the Third Time", the Leader of the Opposition moved an amendment to omit "now" and add at the end of the Question "this day 6 months". Debate was continued until the interruption of Business at 10.22 p.m., when the debate was adjourned.

After the resumption of debate on May 15 (1952 VOTES, 650; 79 *Assem. Hans.*, 5870), the Closure was put and agreed to (Ayes, 82; Noes, 57) and the Question "That the word 'now' proposed to be omitted stand part of the Question" was put and agreed to (Ayes, 82; Noes, 57). The Bill was thereupon read the Third Time and a Message ordered transmitting the Bill to the Senate for concurrence.

IN THE SENATE

On May 16 (1952 MIN., 173; II. 1952 *Sen. Hans.*, 2808), upon the Message from the Assembly being read, Senator the rt. hon. Heaton Nicholls asked for Mr. President's Ruling whether the Senate, sitting either separately or jointly, might under the Constitution of the Union of South Africa, lawfully consider the Bill conveyed in this Message. Whereupon Senator Nicholls and other hon. Senators having been heard, Mr. President said that he would give a considered Ruling at a later date.

On May 19 (1952 MIN., 175; II. 1952 *Sen. Hans.*, 2871), Mr. President gave his Ruling, as follows:

> On Friday last, on receipt of a Message from the Honourable the House of Assembly desiring the concurrence of the Senate in the High Court of Parliament Bill, the Right Honourable Senator Heaton Nicholls asked me, on a point of order, whether the Senate, sitting either separately or jointly, could, under the Constitution of the Union of South Africa, lawfully consider the Bill conveyed in that Message.
>
> I have given careful consideration to the arguments of the Right Honourable Senator and of other Senators who supported him. The main substance of their argument was that it is unlawful for the Senate, or for Parliament, to consider this Bill because the Bill itself is unlawful on the ground that it is

in conflict with the Constitution. As I pointed out however in my Ruling last year on the Separate Representation of Voters Bill (*see* JOURNAL, Vol. XX, p. 61), I do not consider it the function of the presiding officer to pronounce upon the legality or validity of proposed legislation. For it to be otherwise would constitute an interference with the right of Parliament " to make laws for the peace, order and good Government of the Union ".

I would like however to comment on one or two of the points raised.

The object of the Bill is to provide for the establishment of a High Court of Parliament and to define its jurisdiction. Even the Right Honourable Senator Heaton Nicholls acknowledged that Parliament, to quote his own words, had the power " to establish another Court to have the testing right now exercised by the Appellate Division ", and I find it difficult therefore to agree with his submission that while Parliament may have the power to establish that Court, it has not the power without violating the Constitution to determine its composition as provided in this Bill.

One Honourable Senator compared what he considered to be my duty in respect of this Bill with the duty required of me under S. 60 of the South Africa Act. Legislation in conflict with the provisions of that section however could never, particularly since the passing of the Statute of Westminster and the Status Act, give rise to a question of invalidity but merely the waiving of parliamentary privilege.

While the question of the entrenched sections was not specifically raised in the point of order itself, certain Senators contended that the Bill was out of order on the ground that it attempted to circumvent the provisions of those sections of the South Africa Act. In my opinion however it would be exceeding my functions for me to look beyond the contents of the Bill as actually before this House and to inquire into and take cognisance of matters which are not embodied in its provisions.

I am accordingly not prepared to rule the Bill out of order on the ground that the Senate may not lawfully consider it.

First Reading.—By direction of Mr. President, the Bill was then read a First Time and the Second Reading set down for the morrow.

Second Reading.—On May 20 (1952 MIN., 179; II. 1952 *Sen. Hans.*, 2938), upon the Question: " That the Bill be now read a Second Time " being proposed, an amendment was moved by Senator Nicholls to delete " now " and add at the end of the Question " this day 6 months " and debate sustained until 6.7 p.m., when it was adjourned to the following day.

Debate was resumed on May 21 (1952 MIN. 181; II. 1952 *Sen. Hans.* 3005), and continued on May 26 (1952 MIN. 183; III. 1952 *Sen. Hans.*, 3115), when the Question: " That the word 'now', proposed to be deleted, stand part of the Question ", was put and agreed to (Contents, 19; Not contents, 14). The amendment therefore dropped and the Bill passed 2.*R.*

In C.W.H.—On May 27 (1952 MIN., 185; III. *Sen. Hans.*, 3249), the House went into *C.W.H.* and Clause 1 was put and agreed to (Contents, 20; Not Contents, 14).

An amendment was proposed by Senator Wynne in Clause 2 after " Court " on p. 3, l. 31 to insert " which shall be a court of law ", which after debate was put and agreed to.

Clause 2 as amended was then put and agreed to (Contents, 20; Not Contents, 14).

In Clause 3, an amendment was proposed by Senator Wynne to add the following paragraph to follow paragraph (*b*):

(*c*) The President of the Court or the Chairman of a Judicial Committee, as the case may be, shall decide all questions relating to the competency of a member of the Court or a Judicial Committee to vote or take part in the discussion of any matter before the Court or a Judicial Committee, as the case may be, and the decision of the President or the Chairman on any such question shall be conclusive.

which was put and agreed to.

Clause 3 as amended was then put and agreed to (Contents, 20; Not Contents, 14).

Clauses 4, 5, 6 and 7 were then put and agreed to in each case, on division (Contents, 20; Not Contents, 14).

In Clause 8, amendments were proposed by Senator Wynne on p. 7, l. 10 after " any " to insert " legal " and in ll. 18 and 21 after " Provincial " to insert " or local ", and put and agreed to; after which the Clause as amended was put and agreed to (Contents, 20; Not Contents, 14).

Clauses 9, 10 and the short title were then respectively put and agreed to, upon the same voting and the Chairman was directed to report the Bill with amendments, their consideration being set down for the morrow (1952 MIN., 186-8; III. *Sen. Hans.*, 3257).

Report Stage.—On May 28 (1952 MIN., 191; III. 1952 *Sen. Hans.*, 3345), the Bill as amended was considered. The amendments in Clauses 2, 3 and 8 were then successively put and agreed to, the voting in each case being Contents, 21; Not Contents, 14, and the taking of the Third Reading then on an unopposed Motion being objected to, the Third Reading was set down for May 29 (1952 MIN., 195; III. 1952 *Sen. Hans.*, 3462), when the Question was put and agreed to (Contents, 21; Not Contents, 16), after which a Message was ordered to be sent to the House of Assembly desiring its concurrence to the amendments made by the Senate in the Bill.

The Senate amendments to the Bill were considered by the House of Assembly on May 29 (1952 VOTES, 726; 79 *Assem. Hans.*, 6749), when they were put and agreed to, the voting on the amendments in Clauses 2 and 3 in each instance being: Ayes, 76; Noes, 46, and that on the amendments in Clause 8 being: Ayes, 76; Noes, 47.

Message was then Ordered to be sent to the Senate accordingly, and the Bill was returned to the Assembly for certificates after which the Senate returned the Bill to the Assembly for information.

R.A.—This was duly announced in both Houses on June 3 (1952 MIN. 201; 1952 VOTES, 753), and the Bill became Act No. 35 of 1953.

IN THE COURTS

The case of Harris and Others v. *Dönges and Another.*—In this case, which followed upon the passing of the Separate Representation of Voters Act (No. 46 of 1951) a judgment was delivered in

the Cape Provincial Division of the Supreme Court on October 26, 1951, by De Villiers, J.P., and concurred in by Newton-Thompson and Steyn, JJ., it was held that in view of the decision of the Appellate Division given in the case of *Ndlwana* v. *Hofmeyr*, 1937 A.D. 229, the Court was precluded from inquiring into the validity of the Act.

The application for invalidating the Act having failed, an appeal was noted.

The appeal was heard before the Appellate Division of the Supreme Court on February 20 to 26, 1952, and the judgment delivered by Centlivres, C.J., on March 20, 1952, was concurred in by Greenberg, Schreiner, van den Heever and Hoexter, JJ.A.

In his judgment the Chief Justice dealt with the decision given by the Appellate Division in the *Ndlwana Case*, and having held that decision wrong, he refused to follow it and declared the whole of Act No. 46 of 1951 invalid. The appeal was accordingly allowed. (See also Chap. XII, pp. 91-102, " The Vote Case ".)

Review by High Court of Parliament of Judgment and Orders of the Appellate Division.—On June 23 the Hon. J. H. Conradie, Q.C., M.P., was appointed President of the High Court of Parliament, and on the same day the Prime Minister lodged with the President an application for the review by the High Court of the judgment and Orders of the Appellate Division of the Supreme Court given on March 20, 1952.

On June 26 the President by notice in the *Gazette:*

(i) Appointed the following members of the Court as members of the Judicial Committee for the purpose of considering the application of the Prime Minister, namely, the Hon. C. R. Swart, the Hon. F. C. Erasmus, the Hon. J. F. T. Naudé, the Hon. J. G. N. Strauss, Dr. the Hon. C. F. Steyn, the Hon. C. M. van Coller, Senator the Hon. M. J. Vermeulen, Dr. D. G. Conradie, Senator the Hon. J. Duthie and Dr. A. Hertzog;

(ii) designated the Hon. C. R. Swart as Chairman of the Committee; and

(iii) determined that the Committee holds its sittings in the Transvaal Provincial Council Chamber in Pretoria on Monday, July 21.

The Judicial Committee sat on July 21, 22, 23 and 24, and on August 8, 13 and 14, and adopted a Report and recommendation.

A sitting of the High Court of Parliament was then convened to be held in the Transvaal Provincial Council Chamber in Pretoria on August 25, for the purpose of considering the Report and the recommendations of the Judicial Committee.

The High Court sat on August 25, 26 and 27, and on the last day made the following Order:

(1) That the judgment and Orders of the Appellate Division of the Supreme Court of South Africa in the matter of *G. Harris, E. Franklin, W. D. Collins and E. A. Deane, respectively* v. *Minister of the Interior and Electoral Officer (Cape)*, whereby the said Division declared the Separate Representation of Voters Act, 1951 (Act No. 46 of 1951), invalid, null and void and of no legal force and effect in terms and by virtue of Ss. 35 and 152 of the South Africa Act, 1909, as amended, be set aside on the grounds set out by the Judicial Committee in its report; and

(2) that there be no order as to costs in the proceedings before this Court and before the Judicial Committee and that the orders as to costs made by the Appellate Division in the said matter be allowed to stand unaltered.

Members of the Opposition parties did not attend the sittings of the Judicial Committee or of the High Court of Parliament.

The Further Case of Harris and Others v. *Dönges and Another.*— As a result of the passing of the High Court of Parliament Act an application, on behalf of the 4 Coloured voters, was made in the Cape Provincial Division of the Supreme Court asking for certain Orders as set out in the judgment referred to below.

This application was heard on August 12-14, and on August 29 De Villiers, J.P., delivered judgment. This judgment, which was concurred in by Thompson and Steyn, JJ., declared the High Court of Parliament Act, No. 35 of 1952, invalid.

An appeal was noted on behalf of the Minister of the Interior.

The appeal was heard before the Appellate Division of the Supreme Court on October 27-29, and on November 13 judgments were delivered by Centlivres, C.J., and Greenberg, Schreiner, van den Heever and Hoexter, JJ.A. (See Chap. XII, pp. 102-3, "The High Court Case".)

The appeal was dismissed.

(*Contributed by the Clerk of the House of Assembly.*)

India: Madras (Constitution, Numbers and Quorum of Legislative Council and Legislative Assembly).—From April 20, 1952, the old Legislature set up under the Government of India Act, 1935, ceased to function. On April 21 a new Legislative Council (Constitution of India, Art. 171) (Upper House) of 72 Members was set up, together with a new Legislative Assembly (Art. 170) chosen by direct election on adult franchise. The strength of the Assembly is 376, including one Member, nominated by the Governor (Art. 333), representing the Anglo-Indian community. The quorum of the Assembly is 38.

Pakistan (Rawalpindi Conspiracy (Special Tribunal) Act, 1951).— This Act, No. 27 of 1951, set up a special tribunal of 3 judges to try those charged with complicity in the "treasonable conspiracy unearthed in February and March, 1951". The Act contains the following important provisions:

(1) The tribunal may convict the accused of any offence under any law although such offence was not included in the charge.

(2) The proceedings in the tribunal shall be secret, and any person who participated in the trial as a witness or otherwise shall be subject to the Official Secrets Act.

(3) The special tribunal shall not be adjourned by reason of the absence of the accused person or his Counsel.

(4) The tribunal may receive in evidence any statement made by the accused to a police officer in the course of the investigation.

(5) No court shall entertain any plea as to the jurisdiction of the tribunal or as to the legality or propriety of anything done or purporting to be done by the tribunal.

British Guiana (Constitutional Changes).—A Commission was appointed in 1950 with the undermentioned terms of reference to visit British Guiana in connection with the reform of its Constitution:

To review the franchise, the composition of the Legislature and of the Executive Council, and any other related matters, in the light of the economic and political development of the Colony, and to make recommendations.

Following on the recommendations of the Commission the Colony's constitution was changed by the British Guiana (Constitution) Order in Council, 1953; made on April 1 at the Court at Windsor Castle.

The principal changes effected by that Order in Council can be summarised briefly as follows:

(1) Establishment of a reformed *Executive Council* comprising:

- (*a*) the Governor as President;
- (*b*) 3 *ex officio* members, *viz.*, the Chief Secretary, the Attorney-General and the Financial Secretary;
- (*c*) 6 Ministers elected from among the elected members of the House of Assembly;
- (*d*) 1 Minister elected by the State Council.

The Governor is required under Section 7 of the Order in Council to consult with the Executive Council and *act in accordance* with the advice of the Executive Council in any matter on which he is obliged to consult with the Executive Council.

This is an important change. Under the previous Constitution the Governor consulted his Executive Council but not necessarily either in such Council assembled or in accordance with the advice of the Council.

(2) *A House of Assembly* comprising 3 *ex officio* members, *viz.*, the Chief Secretary, the Attorney-General and the Financial Secretary; and 24 members elected on the basis of Universal Adult Suffrage.

Introduction of Universal Adult Suffrage is another extremely important change in the Colony's Constitution.

Another important feature is that candidates for election to the House of Assembly are not required to possess any property or income qualification but shall be literate in English.

The House is presided over by a Speaker appointed by the Governor from outside the Legislature. The Speaker has a casting vote only.

(3) *A State Council* consisting of 9 Members, 2 of whom are appointed by the Governor on the recommendation of the Ministers elected by the House of Assembly, 1 appointed by the Governor following consultation with the Minority Groups of the House of Assembly, and 6 others appointed by the Governor acting in his discretion.

The President of the Council is elected by the Members from among their number.

This revisionary chamber has a suspensory veto of one year on all Bills passed by the elected chamber other than Money Bills, upon which it has a suspensory veto of 3 months only.

General.—The Legislature has a life of 4 years but the Governor has the power of prorogation and dissolution. The Constitution provides for joint sittings of both chambers to be held when requested by both chambers or on occasions when the Governor in his discretion declares any Bill once rejected by the State Council to be a measure of major concern for the well-being of the State: such Bill shall be considered in a joint session of both chambers.

(*Contributed by the Clerk of the Legislative Council.*)

Gold Coast (Ministerial Changes).—The Gold Coast (Constitution) (Amendment) Order in Council, 1952 (S.I. 1952, No. 455), creates the office of Prime Minister and makes certain consequential alterations to the structure and functions of the Executive Council. The Prime Minister is made responsible for advising the Governor on the distribution of portfolios, and the Ministers of Defence and External Affairs, of Justice and of Finance are made *ex officio* members of the Executive Council. Further, a member of the Executive Council is to vacate his seat thereon if he ceases to be a Member of the Assembly, or if he is absent from the Gold Coast without written permission given by the Governor after consultation with the Prime Minister.

Kenya (New Constitution of Legislative Council).—When the new Legislative Council met on June 12 it was composed according to the new Constitution already described in this JOURNAL (XX. 83). The Governor-General, at the opening of the Senate, pointed out that the new constitution was only a step in the progress of Kenya towards self-government; it was to some extent an experimental step, and it might well be that " experience during the life of this Council will lead to the conclusion that the Government in office must in fact have a majority in the Legislature " (the new constitution gives the unofficial side a majority of 2). The Governor went on to say that before any further step could be taken, the various sections and groups in the Council must set to work to discover the common ground upon which they might combine together to form a parliamentary party which should have some hope of obtaining a majority in the Legislature. Later it was pointed out that the Nominated Members on the Government side " may vote according to their consciences, unless the Government Whip is specifically applied. If they feel unable to accept the

Government Whip (which will be used as sparingly as possible) . . . they are at liberty to resign ". (48 *Hans.*, 11, 22; 49 *Hans.*, 159.)

2. General Parliamentary Usage

House of Lords (Adjournment for late Leader of the House).—On January 30, the Lords, after 3 introductions and one Question, heard speeches in tribute to the late Viscount Addison, K.G., who had been Leader of the House in the Labour Government. As is its custom at the death of a peer who has been its Leader, the House then adjourned as a mark of respect. (174 *Hans.*, 950.)

Jersey (" Financial Interest ").—On March 18, 1952, the States rejected a Motion designed to disqualify a Member of the States for being appointed or being President or member of any Committee or other delegation of the States which had, or had had within the previous 12 months, trading relations with any commercial undertaking in which that Member had a substantial interest.

(*Contributed by the Greffier of the States.*)

Canada: British Columbia (Designation of Official Opposition).—The Legislature of 1949 included 35 Liberals and 12 Conservatives, who together formed a coalition Government. In January 1952, however, the Premier called for the resignation of the Minister of Finance, Mr. H. Anscomb. The latter was the leader of the Conservative group, which accordingly went into opposition; each of its members wrote to the Speaker advising her that they had renounced their allegiance to the Coalition Government and were combining, under Mr. Anscomb's leadership, in a group known as " Progressive Conservatives ".

The official Opposition to the Coalition Government had been the Co-operative Commonwealth Federation Party under the leadership of Mr. Winch; this was not so numerous as the new Progressive Conservative group, and the question therefore arose as to which group should be Her Majesty's Loyal Opposition. The Speaker's Ruling, which was sustained on appeal to the House, was as follows:

Since this Legislative Assembly last met, certain Members of the House have seceded from the Government ranks.

Sir Erskine May, in *Parliamentary Practice*, fifteenth edition, page 245, states: " The prevalence (on the whole) of the two-party system has usually obviated any uncertainty as to which has the right to be called the ' Official Opposition '; it is the largest minority party which is prepared, in the event of the resignation of the Government, to assume office ".

Sir Ivor Jennings, in his *Law and The Constitution*, page 115, says: " The Leader of the Opposition means that member of the House of Commons who is for the time being the Leader in that House of the Party in Opposition to His Majesty's Government, having the greatest numerical strength in that House '; and in case of doubt as to which is the Party in Opposition having the greatest numerical strength, or as to who is the Leader in the House of that Party, the question will be determined by the Speaker ".

I have received formal written notification from each of the constituent Members that the following now constitute a group as Progressive Conservatives under the leadership of Mr. Herbert Anscomb [*the names were read*

out]. I therefore rule that this group be recognised as Her Majesty's Loyal Opposition, and Mr. Herbert Anscomb as the Honourable the Leader of the Opposition ".

(*Contributed by the Clerk of the Legislative Assembly.*)

Canada: Saskatchewan (M.P.'s and Government Contracts and Pecuniary Interest.—Reference was made in the Editorial of the JOURNAL for 1951 (Vol. XX, 51-2) to comment which had arisen in that year in letters to the press and newspaper editorials concerning the effect of amendments made a short while previously to the Legislative Assembly Act. The controversy ultimately reached the floor of the Assembly during the Session of 1952, when the Opposition were accused by the Government of taking advantage of the amendments which they were now, in retrospect, opposing. (Official Report No. 11, p. 48.) During the debate on the Address in Reply the Leader of the Opposition stated that he had deferred collecting from the Saskatchewan Government Insurance Office a sum of $60 in compensation for his dog, which had been killed by a motorist insured with the office, until he had asked the Deputy Attorney-General by telephone whether he could do so without infringing the Act. In the course of that conversation, the Deputy Attorney-General himself had suggested that it might be well to have the Act amended, and the Leader of the Opposition had not cashed the cheque until the amendment had been made. He submitted that it was completely unfair that the amendment of the Act to enable Members to deal with the Government Insurance Office should be used as a justification for introducing further amendments which would enable a Member to have a secret interest in mineral or oil rights and retain his seat in the legislature.

On March 19, 1952, the controversy over the dog incident was revived in the debate on Second Reading of a Bill for an Act to amend the Legislative Assembly Act (Stat. Sask., 1952, c. 6, s. 2) which, introduced by the Provincial Treasurer and subsequently passed, repealed the dubious clauses. As prelude to the Motion for Second Reading, the Minister tabled a series of affidavits sworn by all Members on the Government side, to the effect that they had not taken advantage of the disputed legislation, nor were they otherwise involved in " deals " with the Government of the kind covered by it.

(*Contributed by the Clerk of the Legislative Assembly.*)

Australia: House of Representatives (Use of Chamber for other Purposes).—Over recent years the use of the House of Representatives Chamber for purposes other than the meeting of the House has, with one exception, been restricted to Conferences of Commonwealth and State Ministers at the Prime Minister and State Premier level, viz., the Premiers' Conference and the Loan Council. These conferences are held 2 to 3 times every year.

The exception was the Conference of British Commonwealth countries on the Japanese Peace Settlement held in August/Sep-

tember, 1947. Mr. Speaker approved the use of the Chamber in this case as the Conference was held at a high ministerial plane.

The restriction on the use of the Chamber was affirmed by Mr. Speaker in reply to a Question on the House on October 2, 1951. (214 *Hans.*, 175.)

(*Contributed by the Clerk of the House of Representatives.*)

South Australia: House of Assembly (Tables, etc., in Hansard).—The following new Standing Orders (No. 126*a* and No. 135*a*) were adopted by the House of Assembly on November 20-21, 1952:

Answers in form of statistical or other factual tables.

126a. Answers to questions in the form of tables of statistics or other factual information, by leave of the House, may be inserted in the Official Report of the Parliamentary Debates without such tables being read.

Unread statistical or factual tables inserted in official report.

135a. Where a member, in speaking to a Question, refers to a statistical or factual table relevant to the Question, such table may, at the request of the member and by leave of the House, be inserted in the Official Report of the Parliamentary Debates without being read.

Western Australia (Time Limits of Speeches).—On August 5, 1952, the Standing Orders Committee reported to the Legislative Assembly a proposed new Standing Order, based largely on that of the Parliament of Victoria, relating to Time Limits of Speeches. The text of the proposed Standing Order was as follows:

New Standing Order No. 169A

No Member shall speak for more than forty-five minutes in any debate in the House except in the debate on the Address-in-Reply or on a direct motion of want of confidence, when a Member shall be at liberty to speak for one hour.

Provided that with the consent of a majority of the House on a Motion to be moved and determined at once without amendment or debate, a Member may be allowed to continue his speech for a further period not exceeding thirty minutes.

Provided also that this Standing Order shall not apply to a Member moving the second reading of a Bill or a substantive and independent motion, or to the mover of a direct motion of want of confidence, or to the Leader of the Government, or to the Leader of the Opposition, or to any Member deputed by either of such Leaders respectively to speak first for the Government or Opposition on any of such motions; but when the Leader of either side so deputes his right such Leader shall then be limited to the same extent as other Members.

In Committee of the House, except as hereinafter provided, no Member other than a Member in charge of a Bill or motion, or Minister in charge of an Estimate, shall speak for more than fifteen minutes on any one question on the first occasion, nor more than ten minutes on each subsequent occasion. This Standing Order shall not apply to a Minister introducing the general discussion on the Consolidated Revenue Fund or General Loan Fund Estimates or the general discussion on the administration of a Minister's Department, or to the Leader of the Opposition replying thereto, or to any Member deputed by the Leader of the Opposition to reply first thereto. All other Members debating such general discussions, including the Leader of the Opposition when he has deputed his right to speak first in reply, may speak for not more than an hour thereon. The Minister who introduced the same shall be allowed a reply not to exceed forty-five minutes.

The proposed Standing Order was agreed to on October 14, 1952.

India: Bihar (Ministers' Right to Sit and Speak in both Houses).—There is a bicameral Legislature in the State of Bihar and the Ministers are entitled to sit, speak and otherwise take part in either House of the State Legislature except that they are not entitled to vote in the proceedings of that House of the Legislature of which they are not members. This right is given to them under Article 177 of the Constitution of India which is reproduced below:

> Every Minister and the Advocate-General for a State shall have the right to speak in and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Contributed by the Clerk of the Legislative Assembly.)

India: Bihar (Leader of the Opposition—Salary and Definition).—The Leader of the Opposition is the Chief of the majority party in Opposition to Government party in the House. He is given the first seat on the front bench to the left of the Speaker's desk just as the Leader of the House is given the first seat on the front bench to the right of the Speaker's desk. He is paid salary and allowances just like an ordinary member of the House. But he is provided with a telephone at Government cost during each session of the Assembly and a separate office chamber in the Assembly Buildings.

(*Contributed by the Clerk of the Legislative Assembly.*)

Kenya (Emergency).—In consequence of the Mau Mau emergency, the Legislative Council, at its meeting on September 25, suspended Standing Orders and passed the following Emergency Bills through all their stages in 4 sitting days: Evidence (Temporary Provisions), Special Districts Administration (Amendment), Police (Amendment), Printing Presses (Temporary Provisions), Penal Code (Amendment), Trespass (Amendment), Evidence (Amendment), Criminal Procedure Code (Amendment).

On October 29 a Select Committee of 11 Members, entitled " The Preservation of Law and Order Committee ", was set up. (50 *Hans.*, 4; 52 *Hans.*, 19.)

Northern Rhodesia African Representative Council (Use of English Language).—On December 18 it was moved that African Members of the Legislative Council ought to speak in their own languages. During the debate it was pointed out that the technical resources of the native languages were not always adequate to parliamentary debate, and that in fact English was often the best medium of communication, because most of the representatives would know some English while many of them did not know more than one of the native languages. On a division the Motion was lost. (9 *Hans.*, 12.)

3. PRIVILEGE

Kenya (Privilege of U.K. Member of Parliament).—On October 29 the Question of " the entry of undesirable persons into the Colony " was raised. The following expressions, referring to a Member of the House of Commons in the U.K., were used in debate, no question of their admissibility being raised.

" near subversive activities "; " that is not only a lie, it is a damnable and near seditious lie "; " persons from overseas who have the impertinence to state that they are going to see whether the measures passed before this Legislature were correct "; " insult . . . and . . . impertinence to this Legislature "; " I resent . . . that because the people of (a constituency in the U.K.) return a man to the Mother of Parliaments, that man has immediately the right to interfere in our affairs "; " unwarrantable interference into our affairs "; " student of falsehood and misrepresentation "; " these words that he has said and the attitude of life he has shown to ignorant people have been a contributory cause of the murder and bloodshed which is taking place in this country ". (52 *Hans.*, 50.)

Mauritius (Privileges and Immunities of Legislative Council).—Until 1952 the only legislation dealing with the privileges of the Legislative Council (apart from the Standing Orders relating to its own internal discipline) had been (i) an old Ordinance, dating as far back as 1841, which dealt with interruptions of the Council's deliberations, the prevention of inaccurate reporting and defamation and abuse; and (ii) certain sections of the local Penal Code dealing with outrage or violence to certain authorities, including the Legislative Council. In 1952 a new paragraph was added to the Mauritius (Legislative Council) Order in Council, 1947, in the following terms:

Privileges of Legislative Council.

23A. It shall be lawful, by laws enacted under this order, to determine and regulate the privileges, immunities and powers of the Legislative Council and its Members, but no such privileges, immunities and powers shall exceed those of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or of the Members thereof.

Pending the introduction of a comprehensive Bill to determine and regulate the powers, privileges and immunities of the Legislative Council, an Ordinance (No. 69 of 1952) was passed to amend the 1841 Ordinance referred to above. Its provisions confer upon the Governor discretionary authority to regulate the admittance of strangers to the precincts of the Chamber, and increase from 3 days' imprisonment to 3 months' imprisonment and a fine of Rs. 500 the maximum punishment for interruption of the Council's proceedings or misbehaviour within the precincts of the Council.

(*Contributed by the Clerk-Assistant of the Legislative Council.*)

Northern Rhodesia Legislative Council (Inaccurate Press Reports).—On December 3 the Speaker referred to certain inaccurate references in the Press to a recent meeting of the Council in which the words " turmoil " and " uproar " occurred, and which contained a misleading and inaccurate description of a Motion for the Adjournment. Mr. Speaker regarded these reports as being seriously

inaccurate and a grave reflection on the Members and the Speaker of the Council. He expected Press criticism to be " based on facts and not on inaccuracies ". Next day, the Speaker informed the Council that the editor of the newspaper concerned had published an apology, which closed the matter. (75 *Hans.*, 421, 475.)

Northern Rhodesia Legislative Council (Reading of Libellous Letter).—During the Motion of thanks for the Governor's address on November 13, a Member, in support of a point in his speech, began to read a letter addressed to him which implied that a third party was a " traitor and impersonator ", and stated that he was a liar. The Speaker interrupted, and Ruled that it was " not proper to read a letter which contains serious charges against another individual ". On the next day the Speaker elaborated his Ruling and said that " the reading from documents of . . . passages which are couched in a way which would not be allowed in a speech is contrary to the spirit of the Rules of Procedure. I refer particularly to charges brought against persons outside the Council by persons also outside the Council. . . . To use this Council as a place of record for recriminations between non-Members is undignified and most undesirable ". This Ruling did not, of course, apply to documents or parts of documents relative to matters under debate and couched in normal language, nor to reading from documents when raising a point of privilege. (75 *Hans.*, 97.)

4. THE CHAIR

House of Commons (Motions of Censure upon the Chair).—Twice in 1952 the House debated Motions censuring the conduct of the Chair. Numerous speakers took part in each debate; it is not proposed in this article to summarise all their arguments, but merely to give a brief account of the origin and disposal of each Motion.

The first of the 2 was moved on May 7 by Mr. Sydney Silverman (Nelson and Colne) in the following terms:

That this House regrets the action of Mr. Speaker in accepting a Motion for the closure after calling the honourable Member for Kirkcaldy and before the same had had the opportunity to speak.

The incident to which the Motion related had occurred in the early hours of April 24, during the debate on a Motion to impose a time-table on the National Health Service Bill (499 *Hans.*, c. 624). Mr. Speaker had called Mr. Hubbard (Kirkcaldy), but before the Hon. Member had had time to speak, the Chief Government Whip had moved the Closure, which Motion had been accepted by Mr. Speaker. Mr. Silverman's Motion, which was not supported by the Leader of the Opposition, was eventually withdrawn. (500 *Hans.*, cc. 397-417.)

The second Motion concerned the conduct of the Chairman of Ways and Means, and was moved by Mr. Ede (South Shields) on behalf of the official Opposition on December 8 in the following terms:

That this House has no confidence in the impartiality or competence of the Chairman of Ways and Means after his conduct in the Chair during the Committee Stage of the Expiring Laws Continuance Bill when, by his acceptance on three occasions of the closure, he improperly curtailed debate and especially by accepting the motion " That the Question, ' That this Schedule be the Schedule to the Bill ' be now put ", he prevented discussion on the whole of Part II of the Schedule; and at the commencement of the Committee proceedings on the Transport Bill when, having just previously allowed great latitude to the Prime Minister in permitting him to intervene on a point of order, he declined to allow the Deputy-Leader of the Opposition to rise to a point of order. (*Com. Journal* (1952-53), pp. 52-3.)

The Motion dealt with matters which had occurred on December 3 in 2 separate sittings of the House. The first series of incidents related to the Expiring Laws Continuance Bill. Shortly after 3 a.m., when the House had been in Committee on the Bill for eleven and a half hours, Mr. Buchan-Hepburn, the Chief Government Whip, claimed (and was granted) Closure upon the amendment under discussion, which had itself been the subject of more than an hour's debate. Mr. Buchan-Hepburn then at once claimed to move " That the Question ' That this Schedule be the Schedule to the Bill ' be now put ", the Chairman accepted the Motion, and although the House proceeded to a Division, no Tellers could be found for the Noes; the closure Motion was therefore carried. The effect of this was to exclude from consideration a number of amendments standing on the Order Paper and relating to the concluding portion of the Schedule. (508 *Hans.*, cc. 1501-2.)

During Question-time on the following afternoon, the Prime Minister (Mr. Winston Churchill) made a reply to an intervention by Mr. Shinwell (Easington) in a manner to which the Opposition took strong exception. Although Mr. Speaker Ruled that the Prime Minister's words did not, in his judgment, amount to an allegation of unavowed motives, several Opposition Members expressed an opinion that they should be withdrawn (cc. 1563-4). It was therefore in an atmosphere of some heat that the Committee stage of the Transport Bill was begun immediately afterwards.

The Prime Minister rose to leave the Chamber, and as he did so was booed by some Opposition Members (c. 1565). He at once returned to his place and stood at the dispatch box. The Chairman himself rose to restore order, and it was later averred by Mr. Ede during the debate on his Motion that the Prime Minister waved his hand towards the Chairman as an indication that he should sit down, and that the Chairman then did so. (509 *Hans.*, c. 49-50.)

A number of points of order were then raised, and at one stage, when Mr. Herbert Morrison, the Deputy Leader of the Opposition, rose to intervene, the Chairman informed him that only one point of order could be dealt with at a time. Mr. Morrison was allowed to proceed when it became clear that he wished to make a submission upon the point of order which was already being dealt with

by the Chairman (508 *Hans.*, c. 1566); Mr. Ede, however, subsequently argued that Mr. Morrison, in contrast to the Prime Minister, had resumed his seat when the Chairman remained standing.

After a debate lasting for 3 hours, Mr. Ede's Motion was withdrawn. (509 *Hans.*, cc. 43-105.)

Union of South Africa: House of Assembly (Mr. Speaker's Seat).—At the General Election of 1953, it was agreed between the political parties that the seat of Mr. Speaker should not be contested, and the Hon. J. H. Conradie, M.P., was duly returned unopposed as the Nationalist Party candidate for the Gordonia electoral division in the Cape Province (*see also* JOURNAL, Vols. III, 48; IV, 11; VII, 150; X, 95, 96; XI-XII, 53).

(*Contributed by Mr. Owen Clough.*)

India: Bihar (Relative Precedence of Presiding Officers of 2 Houses).—Under the provisions of Article 176 (1) of the Constitution of India the Governor was to address both Houses of the State Legislature assembled together in the Assembly Chamber on March 3, 1952, but quite unexpectedly he became indisposed and under medical advice could not come in person to address the Members. He then requested the Speaker of the Assembly to read out his Address after explaining to the Members the reason for his unavoidable absence.

The main reason for this decision was that although in the warrant of precedence both the Speaker of the Assembly and the Chairman of the Council are bracketed together and occupy the same order, the Speaker ranks higher due to his seniority in the incumbency of the 2 offices.

(*Contributed by the Clerk of the Legislative Assembly.*)

Mauritius (Provision for Temporary President and Amendments to Order of Precedence of Members).—An amendment to Section 20 of the Mauritius (Legislative Council) Order in Council, 1947, made provision for the election by the Council, at the commencement of any sitting, of a Member to preside at the sittings of the Council in the absence of both the Governor and the Vice-President. The section originally provided that in such a case the Member present standing first in the order of precedence would preside. Since the Members taking precedence immediately after the Vice-President were the Colonial Secretary, the Procureur and Advocate-General and the Financial Secretary, the effect was that, in the absence of the Governor and the Vice-President, the chief Government spokesman present was placed in the difficult position of having to preside, and was therefore unable to take part, as he should, in the debates. A consequential amendment was made to S.O. No. 17 (43 *Hans.*, pp. 3-10).

Additional Royal Instructions were also issued in 1952 regarding the order of precedence of Members of the Executive Council. Clause 9 of the Royal Instructions of 1947 provided that, after the

ex officio Members, the Appointed Members would take precedence according to the length of time for which they had been continuously Members. The additional Instructions amended Clause 9 to provide that in case 2 or more had been continuously Members for the same length of time, they would take precedence in such order as the Governor might assign.

(*Contributed by the Clerk-Assistant of the Legislative Council.*)

5. Order

House of Commons (Articles allowed to be brought into the Chamber by Members).—On April 8, 1952, during the Committee stage of a Bill, notice was taken by several Members that Lieutenant-Colonel Walter Elliot (Glasgow, Kelvingrove) had brought an attaché-case into the Chamber. The Deputy Chairman took no action, observing that the matter was under the jurisdiction of the Serjeant-at-Arms. (498 *Hans.*, 5, 2554.)

The matter was resumed at Question time the next day, when Sir Richard Acland (Gravesend) asked Mr. Speaker for a Ruling. He called attention to an incident on July 9, 1947, when the then Chairman of Ways and Means had Ruled that although Ministers were entitled to bring in despatch boxes, other Members might not bring in any sort of cases at all.

Mr. Speaker replied that the matter was governed entirely by the ancient usage of the House, according to which certain articles might not be brought into the Chamber. These were (i) weapons and decorations, except when worn by Court Officials or Members moving or seconding the Address in Court dress; (ii) sticks and umbrellas, unless the Hon. Member concerned had a disability making their use reasonable and proper; and (iii) despatch cases. Mr. Speaker further stated:

> An hon. Member is quite in order in bringing into the Chamber any books or papers which he may require to consult or to refer to in the course of debate; but with the exception of Ministers, whose despatch cases and official wallets are under a special dispensation, despatch cases should not be brought in.
>
> I hope the House will agree with me that the Messengers who, under the direction of the Serjeant-at-Arms, remind hon. Members if they should unwittingly be trangressing these old customs, perform their duty with the utmost courtesy because it is easy for an hon. Member to forget these rules.

Mr. Bowles (Nuneaton) then asked Mr. Speaker to give a Ruling upon the recent tendency for Hon. Members to produce exhibits, to which Mr. Speaker replied:

> I agree that there are possibilities of mischief in introducing into the House exhibits such as eggs and other things, but there is a very old precedent going back to the time of Mr. Burke for the introduction of exhibits into the House. I had the pleasure of listening quite recently to an hon. Member who illustrated an Adjournment debate on clothes with a very interesting display of textiles. I should prefer to leave that to the good judgment of hon. Members.
>
> If it is really necessary for an hon. Member to produce an exhibit to illustrate his argument, I see no reason why I should prohibit it in advance. I hope, however, that hon. Members will respect the spirit of our usages, which

is that our Chamber should not be encumbered with matter from outside that is not relevant to the discussion.

Brigadier Peto (Devon, N.) asked whether there was any limit to the size of bags which lady Members might bring in, and Mr. Speaker replied:

The rule against despatch cases dates from a period before we had the advantage of hon. Ladies as Members of the House. I understand that the handbag in a lady's equipment fulfils the office of pockets in male garments, and I further understand that ladies' garments are not usually provided with pockets. I think, therefore, that it would be unreasonable to prohibit ladies from carrying handbags in the House. As to their size, I should prefer to leave that matter also to the good sense of the hon. Ladies who are Members of the House. (498 *Hans.*, 5, 2749.)

Mauritius (Suspension of Member).—Under S.O. No. 64 (3) a Member who was suspended from the service of the Council was required to leave the Council immediately and remain suspended for such period as the Council ordered. An amendment made to this paragraph provides for fixed periods of suspension, namely, one full sitting day (not counting the day of suspension) on the first occasion, 4 full sitting days on the second, and from 5 to 19 full sitting days (as the Council shall resolve) on any subsequent occasion. (43 *Hans.*, pp. 3-10.)

(*Contributed by the Clerk-Assistant of the Legislative Council.*)

Northern Rhodesia Legislative Council (Mention of Civil Servants in Debate).—As a result of the financial system of Northern Rhodesia, all unofficial Members of the Council belong to the Budget Advisory Committee, and therefore come into personal contact with the chief civil servants in the Government Departments. This personal contact results in the civil servants concerned being mentioned by name in debate in the Council. On December 10 the Chairman of Ways and Means in Committee of Supply drew attention to this practice and suggested that it should be checked, in view of the undoubted constitutional fact that official Members, corresponding to Ministers in other Parliaments, were responsible in the Council for the conduct of their Departments. (75 *Hans.*, 634.)

Northern Rhodesia Legislative Council (Wearing of Uniforms).—It is the custom in the Legislative Council for Official Members to wear their uniform, swords and accoutrements at the Opening of a new Session. In view of the ban in the House of Commons upon lethal weapons, decorations, sticks, umbrellas and despatch cases (for a Ruling on which, see page 158), this matter was raised by an Unofficial Member. The Speaker ruled that since the practice in Northern Rhodesia had been continuous (except for the war years), it could only be prohibited by a Resolution of the Council. (75 *Hans.*, 1013.)

6. PROCEDURE

House of Commons (Irregularities Vitiating a Division).—After the House had proceeded to a division on April 9, 1952, an Hon.

Member informed Mr. Speaker that after he had called " Lock the doors ", certain Hon. Members had interfered with an attendant on duty at a door. Mr. Speaker called for a Report from the Assistant Serjeant-at-Arms, who said: " I believe, Sir, that one or 2 Hon. Members got through the door after your direction ' Lock the doors '." Mr. Speaker Ruled that the Division should start again, since an irregularity had occurred. This was accordingly done, in spite of the arguments of several Hon. Members that those who had offended were thereby advantaged.

On the conclusion of the division, Mr. Brook (Halifax) observed that on a previous and similar occasion the late Speaker had allowed the division to count, but had ordered the name of the offending Member to be expunged from the record and demanded an apology from him. Mr. Speaker replied:

> In answer to the hon. Member for Halifax (Mr. D. Brook), I would say that I well remember the incident to which he has referred, when the right hon. Member for Ipswich (Mr. Stokes) was involved. On that occasion the point was raised in the course of the Division. It was a point of order, and the right hon. Gentleman was named by the hon. Member who brought the incident to the notice of Mr. Speaker. On this occasion I had no such particularity afforded to me. All I had was a report of an irregularity. (498 *Hans.*, 5, 2808.)

House of Commons (Private Member's Bill introduced by Member subsequently becoming Member of Government).—On March 28, 1952, on the Second Reading of the Intestates' Estates Bill being moved by Mr. Hylton-Foster (York), Mr. Steele (Dunbartonshire) pointed out that the Bill had been introduced as a Private Member's Bill by Sir Hugh Lucas-Tooth (Hendon, South), who had since become a Minister. He submitted that Sir Hugh was now in a privileged position and could bring forward a Bill as a Member of the Government, and that on this occasion the Government were actually using Private Members' time. He also observed that by allowing Mr. Hylton-Foster to move the Second Reading Sir Hugh was handing over his success in the Ballot to another Member.

Mr. Speaker gave the following Ruling:

> The hon. Member for Hendon, South (Sir H. Lucas-Tooth), as a private Member, was successful in the Ballot and gave notice of presentation of this Bill. The Bill was then read the First time and ordered by the House to be read a Second time upon this day, 28th March, and to be printed.
>
> At that moment it passed out of the control of the hon. Member for Hendon, South, and became an Order of the Day of the House. Thereafter, it was competent for any hon. Member of the House to support that Order of the Day and on this occasion the hon. and learned Member for York (Mr. Hylton-Foster) has risen to move the Second Reading and is exercising the right of a Member of the House to support an Order of the Day set down by the House for this day. Therefore, the proceedings in that sense are perfectly in order.
>
> The subsequent elevation of the hon. Member for Hendon, South, from the status which he occupied when he presented the Bill to the position he now occupies is quite irrelevant to the further progress of an Order of the Day that was properly set down. (498 *Hans*, 5, 1078.)

House of Commons (Revival of a Dropped Order of the Day).—On November 25 the House embarked upon the first of what were intended by the Government to be 2 consecutive days of debate on the Iron and Steel Bill. The day's Business was unexpectedly prolonged owing to the interposition of an adjournment debate under S.O. No. 9, and when discussion of the Iron and Steel Bill was resumed, attendance in the House diminished considerably, no division being expected. Shortly after midnight an Opposition Member took advantage of this, and succeeded in having the House counted out. (508 *Hans.*, 5, c. 426.)

Since no order could be made for the resumption of the debate at the next sitting, the Second Reading of the Bill became a "dropped Order", and in the ordinary course of events a day's notice would have been required before it could appear again on the Order Paper. In accordance with a number of precedents, however, the Government placed upon the Order Paper of November 26, at the commencement of public Business, a Motion "That on this House proceeding to the Orders of the Day the Iron and Steel Bill be ordered to be read a second time". The words "Iron and Steel Bill: Second Reading" then appeared as the first Order, but in italics. (ORDERS OF THE DAY, 1952-53, pp. 540-1.)

At the end of Question-time on November 26, Mr. Attlee (Walthamstow, W.), the Leader of the Opposition, asked Mr. Speaker for a Ruling. He quoted the following passage in Erskine May (15th Edn., p. 374):

> When it is essential that proceedings on an order of the day, cut short by an unexpected adjournment, should be resumed at the next sitting of the House, a notice of motion is placed for that purpose, in the name of a Minister of the Crown, upon the notice paper for the next sitting, at the commencement of public business; and the dropped order is placed, printed in italics, at the head of the list of the orders of the day, or at the place among the orders of the day at which it is proposed to be taken.

He contended that there was nothing "essential" in the proceedings on the Iron and Steel Bill, that the Government had lost their opportunity owing to remissness, and that therefore they could not discuss the Bill that day.

Mr. Speaker Ruled as follows:

> I have looked through a great number of precedents on this matter this morning, and there does appear to be a common practice to place this notice upon the Paper when there has been an unexpected interruption of Business, either by a count or by a suspension for grave disorder, or some other cause, and frequently the House has gone on to consider the business of the day that has been put down by means of this Motion. I am bound to say, on looking at them all, that the Bills or Motions which have been thus continued in this way have all been in the non-contentious class, rather like, though not entirely parallel to, the business taken after 10 o'clock.
>
> The only case I could find of this having been done on a contentious Measure was in the case of the Government of Ireland Bill in 1912. There the House was adjourned because of grave disorder, thus creating an unexpected adjournment, such as happened this morning through the Count. On that

occasion there was a Motion placed upon the Order Paper for the next day precisely similar to the one which stands on the Order Paper today. On that occasion Mr. Speaker Lowther, though he was not asked for a Ruling in public, must have been aware that there were doubts expressed as to the proper position of the matter and of the appropriate course for the House to adopt, because when this Motion for renewing the matter came up he made a statement, with the first part of which I need not worry the House because it refers to the disorder. He said:

> " I cannot help thinking that if the House had an opportunity of rather more consideration of the circumstances in which we stand, and of the position in which the parties respectively are in regard to this matter, another solution of the difficulty might be found more in accordance with the old precedents which have governed this House, and would not create or set up a new precedent ".

I adopt that as the proper course to be taken here, though I am sure that the statement to which the right hon. Gentleman has referred me in Erskine May is a concise and accurate summing up of the position.

As to what is or what is not essential business, I have no means of judging; that is a matter entirely for the House and not for the Chair, and it could only be decided after debate. But I do say that in the case of a Measure which is contentious I adopt and repeat what Mr. Speaker Lowther said.

The Leader of the House then announced that in deference to Mr. Speaker's Ruling, he would not move the Motion on the Order Paper.

Mr. Herbert Morrison (Lewisham, S.) then asked for an explicit Ruling whether the Business on the Iron and Steel Bill was or was not " essential " in the sense used in the passage quoted from Erskine May. He himself did not think it was, since unlike the Finance Bill and certain other Bills, it did not have to be concluded by a certain date. He also asked whether the first day's debate on the Bill could really be counted as one of the 2 days which had been allocated since it had been cut short by the count of the House.

Mr. Speaker replied:

> As to the point of the essential character of the Bill, I think that is a matter for the House and must remain so. The Speaker or the Chair cannot assess whether a Bill is essential or not. I have frequently heard one side of the House say, " This Measure must be passed ", and the other side say, " There is no hurry about it ". That is entirely a question for the House.
>
> As to the second day's debate, I heard it announced on Thursday last that there would be two days of debate on this Bill, and I do not think that there is anything in the Standing Orders or in the practice of the House which renders nugatory the debate we had yesterday. I think that there is nothing contrary to precedent enabling me to rule that. As to the future conduct of the business, that is a matter for the Government and the usual channels to discuss. (508 *Hans*, 455.)

Australia: House of Representatives (" Urgency " Matter).—On November 15, 1951, during discussion of a definite matter of urgent public importance on a Motion " That the House do now adjourn " under Standing Order No. 48, a closure Motion was made and agreed to (as had occurred frequently in the past) " That the Question be now put ".

Before putting the main Question, Mr. Speaker (The Hon. A. G.

Cameron) directed attention to the wording of the Standing Order which referred to " discussion " of the matter and not " decision ". Although he was of opinion that no vote may be taken on an " urgency " adjournment Motion, he did not wish to give a specific Ruling at that juncture. Mr. Speaker then proposed that the House should adopt one of 2 methods: either that the Motion be withdrawn on the conclusion of debate or that any supplementary Motion be restricted to the previous Question which, if carried, would dispose of the original Motion. The matter was not further developed and the adjournment Motion was put and negatived. (215 *Hans.*, 2136.)

On the following day another " Urgency " matter was submitted to the House and it received the required support from Members. Mr. Speaker then drew attention to his proposals of the previous day which involved a departure from the usual procedure. In his opinion this former procedure had been incorrect and there could be no decision on the adjournment Motion which was only for the purpose of discussion. Debate on the adjournment Motion then proceeded and, having continued for 2 hours, lapsed in accordance with Standing Order No. 92 prescribing time limits for debates and speeches. (215 *Hans.*, 2218.)

On November 20, the mover of another " Urgency " Motion was directed to discontinue his speech for having repeated words reflecting on the Chair and, no other Member rising, Mr. Speaker directed that the Business of the Day be called on. A Point of Order was then raised that a Motion supported by the requisite number of Members had been moved and was before the House, and should be disposed of by decision of the House. Mr. Speaker Ruled that the Motion was moved only for the purpose of discussion and did not require a decision. No dissent to the Ruling was moved. (215 *Hans.*, 2266: VOTES AND PROCEEDINGS, p. 198.)

Again, on November 22, no Member rising after several Members had spoken, Mr. Speaker directed the Business of the Day to be called on. (215 *Hans.*, 2572; VOTES, p. 209.)

On November 27, when a further " Urgency " Motion was before the House, the Leader of the House referred to the Ruling of November 20 and suggested that, in view of the differences of opinion in the matter, Mr. Speaker might discuss the position with the Standing Orders Committee before again putting his Ruling into practice. Mr. Speaker agreed to this suggestion and then accepted a closure Motion from the Leader " That the Question be now put ". This Motion was carried and the adjournment Motion negatived. (215 *Hans.*, 2781.)

In subsequent cases, the old procedure was continued pending the review by the Standing Orders Committee.

On May 21, 1952, Mr. Speaker, as Chairman of the Standing Orders Committee, brought up a Report recommending the omission

of Standing Order No. 48 and the adoption, in its stead, of the following new Order:

106A. A Member may propose to the Speaker that a definite matter of urgent public importance be submitted to the House for discussion. Such a matter may be submitted to the House only after Petitions have been presented and Notices of Motion given and before the Business of the Day is called on. The Member proposing the matter shall present to the Speaker at least one hour before the time fixed for the meeting of the House a written statement of the matter proposed to be discussed; and if the Speaker determines that it is in order, he shall read it to the House. The proposed discussion must be supported by eight Members, including the proposer, rising in their places as indicating approval. The Speaker shall then call upon the Member who had proposed the matter to speak.

At any time during the discussion, a Motion may be made by any Member " That the Business of the Day be called on " and such Motion shall be put forthwith and decided without amendment or debate, and, if agreed to, the Business of the Day shall be proceeded with immediately. A Motion in any other form will not be in order.

In the event of more than one matter being presented for the same day, priority shall be given to the matter which, in the opinion of the Speaker, is the most urgent and important.

The Committee also recommended that consequential drafting amendments be made to Orders Nos. 49, 62, 87, 92.

The proposed new Order 106A retained all the provisions of Order No. 48 with the exception that discussion of an " Urgency " matter would be initiated by simple submission to the House instead of on Motion " That the House do now adjourn ". As no Motion would be before the House, the closure could not be moved but it was provided that the discussion could be terminated (apart from effluxion of time under Order No. 92, or lack of speakers) by the passing of a Motion " That the Business of the Day be called on ".

The Report of the Committee was considered on May 28, 1952, when the House, without debate, agreed to a Motion that the Report be adopted and that the Standing Orders be amended as recommended by the Committee. (VOTES, p. 334.)

(*Contributed by the Clerk of the House of Representatives.*)

Union of South Africa: House of Assembly (The Guillotine).—(1) *Committee of Supply.*—In 1947 it was decided as an experiment to adopt the practice followed in the 1920 and 1921 sessions of having separate Motions for the House to go into Committee of Supply in the Estimates of Expenditure from the Consolidated Revenue Fund and the Railway and Harbour Funds, the proceedings on the Estimates being limited to the periods stated in the respective Motions. This practice was continued until the 1952 session when, in order to save time, it was decided to revert to the ordinary procedure laid down in Standing Order No. 102, viz., of having only one Motion to go into Committee of Supply on the Estimates of Expenditure from the Consolidated Revenue Fund and the Railway and Harbour Funds, the debate on the Motion (exclusive of the speeches of the Ministers of Finance and of Transport)

being limited to 4 days. Provision was also made in the Motion for limiting the proceedings in Committee of Supply on both sets of Estimates to 125 hours (V. & P., p. 507). Upon the conclusion of the period allotted, the Estimates of Expenditure from the Railway and Harbour Funds had not been disposed of.

(2) *Bills declared to be of an Urgent Nature.*—In order to expedite the passage of certain legislation through the House at the end of the session a Motion was adopted in terms of which a Minister could, at any time, declare any Bill upon the Order Paper to be of an urgent nature and forthwith limit, without debate, the proceedings on the various stages of that particular measure, subject to a minimum of:

(*a*) 2 hours for the Second Reading, excluding the time occupied by the Minister in charge of the Bill in moving the Second Reading;
(*b*) 3 hours for the Committee Stage;
(*c*) half an hour for instructions to the Committee of the Whole House;
(*d*) one hour for the Report Stage; and
(*e*) one and one half hour for the Third Reading, excluding the time occupied by the Minister in charge of the Bill in moving the Third Reading (V. & P., p. 967).

This procedure was adopted in connection with the Group Areas Amendment Bill, the Natives (Abolition of Passes and Co-ordination of Documents) Bill and the remaining stages of the Native Services Levy Bill, and proceedings on the various stages of the measures were limited to the minimum periods provided for in the Motion.

It may be of interest to record that the Australian House of Representatives as far back as 1918 adopted a Standing Order providing for this method of limiting debate, and that the Senate of the Union Parliament adopted a similar procedure in 1950 in connection with certain legislation then before that House (Senate Minutes, 1950, pp. 218-220).

(*Contributed by the Clerk of the House of Assembly.*)

Union of South Africa: House of Assembly (Expunging of Resolution from Minutes of Proceedings of Select Committee).—The Select Committee on Railways and Harbours inquired specially into the question of the disposal of surplus steel by the Railway Administration, which was commented upon in the Controller and Auditor-General's Report on Railway Accounts for 1950-51. At the meeting of the Committee at which evidence on this particular matter was first heard, a Resolution was adopted on a division to the effect that as one of the members of the Committee was chairman of the Tender Board at the time the steel transactions under consideration commenced, the Committee desired the House to decide whether the Member concerned ought to be a Member of the Committee. Upon Mr. Speaker's attention being drawn to

the terms of the Resolution, he pointed out in a Ruling which was placed before the Committee at its next meeting that the Resolution was out of order and should be expunged from the Minutes of the Committee's Proceedings. (S.A. 2A, 1952, pp. viii-x.)

(*Contributed by the Clerk of the House of Assembly.*)

Kenya (Rejection of Amendment).—On July 8 the Speaker refused to accept for discussion an amendment to substitute the words "any profits" for "all profits", on the ground that the 2 expressions were identical in meaning. (49 *Hans.*, 16.)

7. Standing Orders

House of Lords (Suspension of Standing Orders Opposed).—Before the recesses at Christmas, Easter, Whitsun and in the summer, it is by now almost the normal practice for the House of Lords to suspend its Standing Orders No. XXI and XXXIX in order that Bills may be passed through their remaining stages before the recess, and that Government Business may have precedence. On May 20 (a week or so before the beginning of the Whitsun recess) the Government moved that Standing Order No. XXXIX be dispensed with for the purpose of passing the National Health Service Bill, which the Government wished to come into operation on June 1, through its remaining stages. This Motion was in effect opposed by the Viscount Stansgate, who wished to amend it by adding at the end "excepting the Question that the Bill do now pass; and that Standing Order No. XXXVII be considered in order to its being dispensed with for the purpose of allowing amendments to be moved upon the Third Reading of the Bill without previous notice given."

Lord Stansgate's argument was that since the Bill had been guillotined in the House of Commons, and no amendment had been accepted either there or in Committee in the Lords, it was unfair to complete the Report and Third Reading stages in one day in the Lords. The Government retorted that in the first place the time-table had been agreed upon "through the usual channels", and in the second place that a special Report stage had been engineered for the benefit of the Opposition since, the Bill having been un-amended in Committee, a Report stage would not normally have been required. The demand for an extra day's consideration of the Bill was, therefore, unjustified. Moreover, the principle of not putting down amendments without notice on Third Reading was one which should only be circumvented on occasions of the utmost importance and urgency. Lord Stansgate then withdrew his amendment, and after consideration of a number of amendments put down by the Opposition, the Bill was read a third time and passed without amendment. (176 *Hans.*, 1134.)

Union of South Africa: Natal (Meeting of Provincial Council).—The Standing Rules and Orders of the Natal Provincial Council were amended as follows during 1952:

1. Standing Order No. 50 was amended as follows:

After the word *adjourned*, where it occurs for the first time, insert the following:

"Provided that on receipt of a requisition from the majority of the members of the Council, Mr. Chairman shall, subject to the giving by him of at least seven days' notice to Councillors, call the Council together to meet on a date earlier than the date to which it was adjourned and fix the hour of such meeting, provided further that such earlier meeting shall in no manner whatsoever invalidate nor be deemed to invalidate by reason of such meeting any private draft ordinance which, but for such earlier meeting, would have been introduced at the later meeting."

2. The following new Standing Order was inserted:

Private Draft Ordinance not invalidated by prorogation.

232 bis. No private draft Ordinance shall in any manner whatsoever be invalidated or be deemed to have been invalidated by reason of the prorogation of the session during which, but for such prorogation, it would have been introduced.

(*Contributed by the Clerk of the Provincial Council.*)

India (Amendments to Standing Orders of Parliament and House of the People).—A number of amendments were made by the Speaker on April 5 and July 14, 1952, to the Rules of Procedure and Conduct of Business in Parliament and the House of the people respectively (*Gazette of India, Extraordinary*, Part I, Section 1, Nos. 126 and 302A). The most important of these are as follows:

(*a*) *Parliament*

(i) *Business Advisory Committee.* A new series of Rules (Rules 25A-H) sets up a Committee of 15 members nominated by and including the Speaker, with a quorum of 5, to recommend the time to be allocated to the stages of such Government Bills as are referred to the Committee by the Speaker in consultation with the Leader of the House. Only one form of Motion (" that this House agrees with the allocation of time proposed by the Committee in regard to such and such Bill or Bills ") may be moved on the Report of the Committee, but an amendment to refer the Report back to the Committee may be moved to the Motion. Debate on such a Motion may last for half an hour, with a time-limit of 5 minutes to every speech. After a report has been agreed to, variation may be made to the allocation of time on the request of the Leader of the House, provided that there is general agreement; such variation is enforced by the Speaker after taking the sense of the House.

(ii) *President's Recommendation.* Where the recommendation of the President is necessary in respect of a Bill or an amendment, such recommendation is to be communicated to the Secretary of Parliament by the Minister concerned in writing (Rules 56A and 84A).

(iii) *Select Committees.* Members absent without permission from 2 or more meetings of Select Committees may be discharged from membership of such Committees on a Motion being moved in the House (Rules 65A, 108 (3), 201 (3) and 213 (5)). No documents submitted to a Committee may be withdrawn or altered without

the Committee's knowledge and approval. (Rules 73, 190 (4) and 206 (4).)

Reports of Committees must be signed by the Chairman or, if he is not readily available, by another Member chosen by the Committee. (Rules 77 (5), 112 (2) and 191 (3).)

Bills.—Certain amplifications are made to the procedure for withdrawing Bills. (Rules 99 and 99A.)

Papers.—Papers relating to Business, laid upon the Table, or presented to a Committee may be published by order of the Speaker, and their publisher is immune from court proceedings. (Rule 176C.)

Resignation of Membership.—A set form of letter of resignation is laid down, in which no reasons are stated. Any reasons or extraneous matter introduced into such a letter need not be read to the House by the Speaker. (Rule 197 (1).)

Leave of Absence.—If a member granted leave of absence attends during his leave, the rest of the leave automatically lapses. (Rule 198 (5).)

(*b*) *House of the People*

A series of 23 new Rules (Rules 263-285) sets forth in detail the composition and procedure of Parliamentary Committees. Members of such Committees may be either appointed by the House or nominated by the Speaker; their Chairman is always appointed by the Speaker. The quorum is one-third of the membership. Provision is made for the discharge of absentee Members, the Chairman's casting vote, the appointment of sub-committees, and the time and place of sittings (which are in private). Committees are given power to send for persons, papers and records and summon witnesses, but may not sit without the precincts of Parliament House except with the consent of the Speaker. Witnesses may appear by approved counsel, and all evidence is taken on oath. Reports of Committees must be made within one month of the date of reference to the Committee of the matter in question (unless an extension is granted by the House). If the Committee thinks fit, any completed part of such a Report may be made available in confidence to the Government before presentation to the House. The ultimate arbiter of all points of Committee procedure is the Speaker, who may give directions to the Chairman.

India: Mysore (Rules of Procedure).—(i) *Legislative Assembly.*—A number of amendments were made on October 20 to the Rules of Procedure and Conduct of Business of the Mysore Legislative Assembly. The main purpose of these amendments was to regulate the relations of the Assembly with the newly-created Legislative Council (see below). Numerous amendments consequential upon the creation of another House were made to existing Rules, and 3 new Sections were added, dealing with (i) Bills originating in the Assembly and not agreed to by the Council; (ii) Bills originating in

and passed by the Council and received therefrom in the Assembly; and (iii) Joint Select Committees.

Amendments were also made to Rules 4 (Election of Speaker) and 5 (Election of Deputy Speaker), substituting for the previous complicated system of election by ballot a procedure in complete conformity with that used by the United Kingdom House of Commons. Rule 112, which prohibited for a calendar year the repetition in substance of Resolutions once moved, was restricted in its application to Resolutions which had been voted upon. By an amendment to Rule 124, amendments to Motions to reduce a supply grant became permissible, but amendments to Motions to omit such a grant were disallowed.

(ii) *Legislative Council.*—On October 20, a code of Rules of Procedure and Conduct of Business was adopted by the Mysore Legislative Council under Clause (i) of Article 238 of the Constitution of India. These Rules are for the most part a replica of the Rules of Procedure of the Legislative Assembly as amended (see above); in particular, the chapter on General Rules of Procedure is identical with that of the Legislative Assembly, apart from the substitution of " Chairman " for " Speaker ". There are 3 Rules which have no counterpart among those of the Assembly, relating to (*a*) references of congratulation or condolence by Members or Ministers, and (*b*) procedure about asking Questions starred (*i.e.*, oral) and unstarred (*i.e.*, to which no oral answer is required). The remaining differences are consequential entirely upon the differing powers of the 2 Assemblies.

Southern Rhodesia: Legislative Assembly (Amendments to Standing Orders).—Two amendments to the Standing Orders of the Legislative Assembly were made in 1952, on the recommendation of the Committee on Standing Rules and Orders. The first abolished the provision, in S.O. 106, that when a Motion was moved in Committee of Supply to omit or reduce an item in a vote, that Motion only should be debated until disposed of. By the provisions of S.O. 108, once the question for omitting or reducing an item has been put and voted on, no Motion or debate can be allowed upon any preceding item; the effect of the amendment was, therefore, to make it no longer possible to stifle debate upon earlier items in a vote by the expedient of moving a reduction to the last.

The second amendment removed a restriction prohibiting a Member for voting or speaking upon matters in which he had an indirect pecuniary interest. This did not, of course, affect the normal restriction relating to a direct pecuniary interest. (VOTES AND PROCEEDINGS, 1952, p. 485.)

Kenya (New Standing Orders).—On July 11, new Standing Orders were adopted by the Legislative Council. They had been framed by the Governor under Royal Instructions, but had been considered, in draft, and amended by an unofficial committee of the Council.

A noteworthy provision of the Standing Orders is that the text of all Bills is to be circulated to every Member and published in the official gazette at least 21 days before First Reading (Standing Order No. 91).

At this Session of the Council a separate Chairman of Ways and Means (Mr. E. J. C. Neep, Q.C.) was, for the first time, appointed. Previously the Speaker had also been Chairman. (49 *Hans.*, 278.)

8. Financial Procedure

Union of South Africa: House of Assembly (Changes in the form of Appropriation Legislation and of the Estimates of Expenditure).— In 1925 the Select Committee on Public Accounts and on Railways and Harbours reported respectively that no changes in the form of Appropriation legislation and no material changes in the form of the Estimates shall be introduced without the proposals having been submitted to and approved of by the Select Committees on Public Accounts and on Railways and Harbours. (*See* Resolution No. 8, Third Report, Select Committee on Public Accounts, 1925, and Resolution No. 25, Fourth Report, Select Committee on Railways and Harbours, 1925.)

In 1941-42, however, the practice was commenced, without the approval of the Select Committee on Railways and Harbours, of including certain works as items in the Capital and Betterment Estimates against which no sums were shown as expendable during the year and for which no moneys were actually appropriated in the total amount set forth in the Schedule to the relevant Appropriation Act.

This state of affairs continued until the 1951 session when the Select Committee on Railways and Harbours (in Resolution No. 5 of its Second Report) recommended that such practice be discontinued. The Railway Administration, in its reply to this Resolution, stated *inter alia* that the inclusion of items already authorised by Parliament but on which no expenditure was expected to be incurred in a particular financial year enabled Parliament to have a complete picture of the Administration's new works programme and that in order to regularise this procedure it intended to amend the Railways and Harbours Appropriation Bill to be presented to Parliament so as to permit of savings under any one head being utilised to meet expenditure on any item of that head for which no specific provision is shown.

The matter again formed the subject of enquiry by the Select Committee on Railways and Harbours during the 1952 session. The Committee, after a full investigation of the position, reported that it was impressed by the fact that in the light of present-day circumstances the Administration, when framing the Annual Estimates of Expenditure to be defrayed from Capital and Betterment Funds, is faced with the difficult problem of timing the availa-

bility of funds to coincide with the supply of materials on order, especially rolling stock and other supplies which have to be procured from sources outside the Union, and considered that some modification might be effected in the detail presently incorporated into the prescribed form of the Estimates with a view to easing the difficulties of the Administration while, at the same time, maintaining the principles of maximum Parliamentary control over expenditure. The Committee accordingly invited suggestions towards that end from the Administration.

Notwithstanding the Resolutions of the Committees referred to above, the Minister of Transport was empowered by Section 3 of the Railways and Harbours Appropriation Act, No. 59 of 1952, to authorise a saving on any of the heads set out in the First and Second Schedules to the Act to be made available for any expenditure on an item or sub-head specified under the same head in the Estimates of Expenditure, but against which no moneys have been appropriated.

(*Contributed by the Clerk of the House of Assembly.*)

Transvaal Provincial Council (Consideration of Public Accounts).—Standing Rule 56 (*b*) provided that the report of the Provincial Auditor should be referred to the Public Accounts Committee as soon as it had been tabled. An amendment made in 1952 provided for the reference of the report when it had been received by the Administrator, thus expediting its consideration. (Proceedings, March 6, 1952.)

India: Madhya Pradesh Legislative Assembly (Estimates Committee).—By new Rule No. 120A the Legislative Assembly set up on July 22 a Committee on Estimates to consist of not more than 15 Members of the Assembly elected by a system of proportional representation. The Committee has power to appoint sub-committees and may take evidence in secret.

Kenya (Financial Procedure).—The unofficial side having recently obtained a majority in the Legislative Council, a slight difficulty arose, on February 26, 1952, on going into Committee of Supply. Upon the Motion to resolve into Committee of Supply, it was pointed out by the unofficial side that, before the new constitution, the matters to be considered had already been discussed by the Council. The Acting Chief Secretary warned the Council that to negative the Motion would be equivalent to refusing a supply, and that there was no provision in the constitution of the Colony for the Opposition to take over the Government; the dilemma could, therefore, not be resolved. After prolonged debate, the Speaker pointed out that the Government side could and would go on moving the Motion to resolve into Committee of Supply every day until it was carried; there was, therefore, nothing to be gained by opposing it. Upon this, the Motion was carried, but the unofficial side used their majority to negative each of the supplementary estimates under

consideration. After consultation behind the scenes, the unofficial side moved (on February 28) for a Select Committee " to inquire into the efficiency and economy of all Government departments "; and, after debate, this Motion was carried, having been amended so that the existing Public Accounts Committee, with enlarged terms of reference, was charged with this additional duty. On March 7 the Report of the Committee of Supply (which was to the effect that all the supplementary estimates had been disapproved) was recommitted to the Committee of Supply, whereby the estimates were duly approved.

Later in the year a Civil Contingencies Fund of £250,000 was voted, in further development of the Colony's financial system. The Government also suggested that an Estimate Committee should be set up. (46 *Hans.*, 207, 384; 52 *Hans.*, 22.)

Tanganyika Legislative Council (Public Accounts Committee).—A new Standing Order (No. 46A) sets up the Public Accounts Committee, which shall perform the same duties as the Public Accounts Committee of the House of Commons, and shall consist of Unofficial Members to the number of 5 or less.

9. Bills, Petitions, etc.

House of Lords (Explanatory Memoranda on Bills).—In the course of 1951 and 1952 the practice became general of prefixing explanatory memoranda to Public Bills which had come up from the Commons. The previous practice had been for Bills to receive a memorandum only in the House of their introduction; no memorandum was affixed in the second House. This had given rise to some discontent in the Lords, and the matter had been raised in 1951. It was again raised on the Second Reading of the Expiring Laws Continuance Bill (December 9) and the Government promised that a memorandum would be affixed to all Bills in future wherever possible.

In the case of Commons Bills, the memorandum is " financial and explanatory "; when the Bill comes to the Lords the financial parts of the memorandum are struck out, the memorandum is adjusted to accord with amendments made in the Commons and is then reprinted on the front of the Lords copies of the Bill. (179 *Hans.*, 837.)

House of Commons (Extraneous Matter included in a Petition).—On May 28, 1952, a Petition was presented orally by Dr. Stross (Stoke-on-Trent, Central) praying for the withdrawal of charges imposed on National Health Service patients. Sir Herbert Williams (Croydon, East) pointed out that the Petition also contained an appeal for subscriptions to a private medical organisation, and that a space for donations was printed along the side. Mr. Speaker said that he knew of no precedent which would entitle him to rule the Petition out of order, and remarked that if the Select Committee

on Public Petitions saw fit to report upon it, the matter might be later discussed by the House. (501 *Hans.*, 5, 1328).

On July 30, 1952, the Committee reported (H.C. 286 (1951-52)) that perforated columns headed "Donations" were attached to sheets of the Petition containing lists of signatures and addresses, and that the address of the body responsible for organising the Petition was printed at the bottom of the sheet. They knew of no precedent for Ruling a Petition out of order or disallowing signatures on the grounds of the existence of the "Donations" column, and pointed out that a Petition presented in 1950 had had sheets containing similar columns, several of which had been inscribed with various sums; nor did they see any objection to the address of the body responsible being printed at the foot of the Petition.

The Report concluded:

> However, while the way in which money is raised to defray the cost of Petitions is no concern of Your Committee, they consider that matter relating to this should not form part of a Petition when presented to the House. To allow matter extraneous to the subject of the Petition to be included therein is liable to lead to abuses of the right of petitioning. Your Committee recommend, accordingly, that, in future, Petitions containing such extraneous matter should not be received by the House.

Southern Rhodesia (Examiners of Petitions for Private Bills).—Under S.O. 33 (Vol. II, Private Bills), the Chairman of Committees is one of the Examiners of Petitions for Private Bills. The Chairman of Committees of 1952 had, for many years, taken a leading part in the preparations for the establishment of a University in Southern Rhodesia and expressed a desire to introduce the *University Charter and Inaugural Board (Private) Bill.* The House accordingly appointed another Member as an Examiner for the purpose of this particular petition. (1952, VOTES, p. 19.)

(*Contributed by the Clerk of the Legislative Assembly.*)

Kenya ("Scope of the Bill").—The Kenya Legislature had, in 1947, delegated to the East African Central Legislative Assembly the power to make laws for the whole of East Africa (including Kenya) on general and administrative matters relating to income tax, but not to impose actual rates of tax or specific allowances upon Kenya. On April 25, 1952, the East African Central Legislative Assembly accordingly passed the East African Income Tax (Management) Act, 1952. On July 9, in the Kenya Legislative Council, on the Second Reading of the Income Tax (Rates and Allowances) Bill, the point of order was raised whether members were entitled to criticize, and advocate the repeal of parts of, the East African Income Tax (Management) Act. Inasmuch, however, as that Act did contain provisions whereby the Kenya Legislative Council might, by resolution, amend parts of that Act as it applied to Kenya, it was Ruled that discussion of that Act was in order in debate on the Second Reading of the Income Tax (Rates and Allowances) Bill.

On November 26, a committee was appointed by the Governor of Kenya to study the East African Income Tax Act, and to make recommendations for such amendments. (49 *Hans.*, 136; 52 *Hans.*, 342.)

Gibraltar (Criticism of Government's Methods).—On 2 occasions during the session there was criticism from Elected Members concerning the alleged high-handedness of the Government in the Council. Criticisms of the shortness of time available to Members to consider the Bills before Second Reading were ruled out of order on the Second Reading of a Bill, as also was the " point of order " that a Bill, having been ordered by the Council to be printed after its First Reading, was in fact printed and circulated to the Cabinet, but withheld from the Members of the Council for 6 weeks. In giving a Ruling on this point, the Governor said that the Bill had been read a First Time in the Council before it was considered in the Cabinet in order to save time. What had been printed and circulated to the Cabinet, therefore, was a draft which Members of the Council were not entitled to see; and he justified this procedure by reference to the Standing Orders. (1951/52 *Hans.*, 29 and 170.)

10. Electoral

Canada: House of Commons (Readjustment of Representation).—Under the terms of the British North America Acts, 1867-1951, a readjustment of the representation in the House of Commons was required following the decennial census in 1951. Accordingly, on March 10, 1952, a measure (Bill 8), intituled: " An Act to Readjust the Representation in the House of Commons ", received First reading. This Bill was later withdrawn.

Meanwhile, it was evident that a significant reduction in a provincial membership would ensue under the Rules upon which representation was to be readjusted. Subsequently, a special committee, having considered this and other questions, recommended that the Constitution be amended to provide new Rules in regard to the readjustment of representation, and also that a representation Bill in accord with the proposed provisions be introduced.

Pursuant to these recommendations, a measure (Bill 331), " An Act to amend the British North America Acts, 1867 to 1951, with Respect to the Readjustment of Representation in the House of Commons ", was introduced, and received Royal Assent June 18, 1952. This Act (1 Elizabeth II, Chapter 15) repealed Section 51 of the main Act, and enacted therefor the following:

1. (1). There shall be assigned to each of the provinces a number of members computed by dividing the total population of the provinces by two hundred and sixty-one and by dividing the population of each province by the quotient so obtained, disregarding, except as hereinafter in this section provided, the remainder, if any, after the said process of division.

(2). If the total number of members assigned to all the provinces pursuant to rule one is less than two hundred and sixty-one, additional members

shall be assigned to the provinces (one to a province) having remainders in the computation under rule one commencing with the province having the largest remainder and continuing with the other provinces in the order of the magnitude of their respective remainders until the total number of members assigned is two hundred and sixty-one.

(3). Notwithstanding anything in this section, if upon completion of a computation under rules one and two, the number of members to be assigned to a province is less than the number of senators representing the said province, rules one and two shall cease to apply in respect of the said province, and there shall be assigned to the said province a number of members equal to the said number of senators.

(4). In the event that rules one and two cease to apply in respect of a province then, for the purpose of computing the number of members to be assigned to the provinces in respect of which rules one and two continue to apply, the total population of the provinces shall be reduced by the number of the population of the province in respect of which rules one and two have ceased to apply and the number two hundred and sixty-one shall be reduced by the number of members assigned to such province pursuant to rule three.

(5). On any such readjustment the number of members for any province shall not be reduced by more than fifteen per cent. below the representation to which such province was entitled under rules one to four of this subsection at the last preceding readjustment of the representation of that province, and there shall be no reduction in the representation of any province as a result of which that province would have a smaller number of members than any other province that according to the results of the then last decennial census did not have a larger population; but for the purposes of any subsequent readjustment of representation under this section any increase in the number of members of the House of Commons resulting from the application of this rule shall not be included in the divisor mentioned in rules one to four of this subsection.

(6). Such readjustment shall not take effect until the termination of the then existing Parliament.

2. The Yukon Territory as constituted by chapter forty-one of the statutes of Canada, 1901, shall be entitled to one member, and such other part of Canada not comprised within a province as may from time to time be defined by the Parliament of Canada shall be entitled to one member.

Subsequently, a measure (Bill 393), "An Act to Readjust the Representation of the House of Commons", was presented and it received Royal Assent July 4, 1952.

This Act (1 Elizabeth II, Chapter 48), in effect for the general election held August 10, 1953, provides for representation in the House of Commons as follows:

Eighty-five members of the House of Commons shall be elected for the Province of Ontario, seventy-five for the Province of Quebec, twelve for the Province of Nova Scotia, ten for the Province of New Brunswick, fourteen for the Province of Manitoba, twenty-two for the Province of British Columbia, four for the Province of Prince Edward Island, seventeen for the Province of Saskatchewan, seventeen for the Province of Alberta, seven for the Province of Newfoundland, one for the Yukon Territory and one for Mackenzie district of the Northwest Territories, thus making a total of two hundred and sixty-five members.

(*Contributed by the Clerk of the Canadian House of Commons.*)

Australia: House of Representatives (Absent Voters).—An Amendment (Commonwealth Electoral Act, No. 106 of 1952) of the Commonwealth Electoral Act enabled electors absent from Australia at the time of a Federal election or referendum to record their votes with the least avoidable inconvenience. Previously electors overseas had been able to vote only by obtaining postal voting papers from Australia and by returning their vote in time to reach Australia 7 days after polling date. This procedure involved very early application which was frequently impracticable. The amending Act now permits a properly appointed returning officer at a place outside Australia to issue postal vote papers direct to Australian electors on application. The elector will then forward his ballot paper to the returning officer for the electoral division in Australia in respect of which he has voted. That officer, after taking action prescribed by the electoral law to ensure that the voter is enrolled and is the person who made the application overseas, then admits for scrutiny the envelope containing the postal vote.—(*Hansard*, 31/10/1952, pp. 3965-6.)

(*Contributed by the Clerk of the House of Representatives.*)

Western Australia (Electoral Procedure).—The Electoral Act Amendment Act, 1952 (10 Eliz. II, No. LVII), made a number of amendments to the Electoral Acts, 1907-51. The most important of these related to the interval between nomination and election in the North Province. Section 70 of the principal Act provided that the date fixed for the nomination of candidates for any election in the North Province *or in any District situated therein* should be not less than 35 days before the date fixed for the polling. In the rest of the State the date fixed for polling was, by Section 71 of the Act, not less than 14 days nor more than 45 days after the date of nomination. Since, however, Section 66 of the Act provided that in the case of a general election to the Assembly, the same day should be fixed for the polling in each District, the provisions of Section 70 had the effect of preventing polling in the whole State from taking place within 35 days of nomination; this would be undesirable should a rapid election be required. The Act of 1952 accordingly deleted the words " or in any District situated therein " from the proviso in Section 70 of the principal Act, thus confirming the effect of the proviso to Legislative Council elections only, and removing the anomaly.

The remaining provisions of the 1952 amending Act were purely matters of machinery relating to postal and absent voting.

Union of South Africa (Electoral Delimitation).—Section 41 of the Constitution (9 Edw. VII, c. 9), as amended, is now amended by S. 1 of the General Laws Amendment Act of 1952, which substitutes a new section providing for the appointment of a Delimitation Commission in 1952 and thereafter at intervals of not less than 5 and not more than 10 years, instead of, as hitherto, after every

census. The number of electoral divisions in each Province is now determined on the basis of the number of white voters registered in each Province, instead of on the number of European adult South African citizens residing therein. (*See also* JOURNAL, Vols. VI. 58; IX. 37; XI-XII. 56. For other aspects of the Electoral Law *see* Vols. V. 35 (Franchise); XIV. 64 (Natives); 68 (Consolidation); XV. 80 (Indians); XX. 72, 149 (Coloured).)

(*Contributed by Mr. Owen Clough.*)

India (Amendments to Constitution).—The following enactments of a constitutional nature were made in 1952:

1. The Presidential and Vice-Presidential Elections Act, 1952 (No. 1 of 1952).
2. The Delimitation Commission Act, 1952 (No. 53 of 1952).
3. The Constitution (Second Amendment) Act, 1952 (No. 54 of 1952).

(1) The Presidential and Vice-Presidential Elections Act, 1952, lays down the procedure in the conduct of elections to the offices of the President and Vice-President of India. The Act leaves the conduct of these elections to the Election Commission, vesting in the Supreme Court the authority to decide matters of dispute arising therefrom.

(2) Article 81 (3) of the Constitution of India requires that " upon the completion of each census, the representation of the territorial constituencies in the House of the People shall be re-adjusted by such authority, in such manner and with effect from such date as Parliament may by law determine". The Delimitation Commission Act, 1952, provides for the constitution of a Delimitation Commission charged with this function of readjustment of representation and delimitation of territorial constituencies. Under this Act, the Commission is to consist of 2 Members who are, or have been, Judges of the Supreme Court or a High Court with the Chief Election Commissioner as an *ex-officio* third member.

(3) The Constitution (Second Amendment) Act, 1952, was brought forward to amend Art. 81 (1) (*b*) of the Constitution, which laid down that there shall be not less than one Member for every 750,000 of the population and not more than one Member for every 500,000 of the population. The amendment was necessitated by the rise in population as revealed in the Census of 1951. It was found that in any readjustment of representation of constituencies based on the new figures it would be difficult to keep to the ceiling of 500 Members for the House of the People prescribed in the Constitution unless the limits imposed by Art. 81 (1) (*b*) were simply altered. The Bill as originally introduced in the House of the People sought to revise the figures 750,000 and 500,000 in Art. 81 (1) (*b*) to 850,000 and 650,000 respectively. The amendment as finally accepted by

Parliament merely omitted the limit of " not less than one member for every 750,000 ".

(*Contributed by the Secretary of the House of the People.*)

11. Members' Salaries, etc.

Canada: House of Commons (Payment of Retiring Allowances to Members).—A scheme was instituted during the course of the year to provide retiring allowances, on a contributory basis, to persons who had served as Members of the House of Commons. The House agreed, on June 19, to a Motion by the Prime Minister (the Rt. Hon. L. S. St. Laurent) " that the subject of a pension plan for Members of Parliament after long service based on contributions by all members be referred to the Standing Committee on Commerce and Banking ". (1952 *Com. Hans.*, 3415.) The Report of the Standing Committee was presented on June 24, and the Prime Minister obtained the leave of the House (48 hours' notice being normally required for such a Motion) to move the House into Committee at the next sitting to consider the following Resolution:

That it is expedient to introduce a measure to provide for the establishment of a pension plan after long service for Members of the House of Commons of Canada; to provide also for contributions by all the said Members to a special account for such purpose; and to provide further that the pensions payable shall be paid out of the Consolidated Revenue Fund and charged to the said special account. (1952 *Hans.*, 3672.)

The Resolution was accordingly considered on June 25, carried (after some debate) " on division ", reported and agreed to. Leave was accordingly given to introduce a Bill (392), which was read the first time. (*Hans.*, 3678.)

This Bill, which eventually received the Royal Assent on July 4 (*Hans.*, 4294), was not amended during its consideration by Parliament. Its provisions are as follows:

(*a*) *Retiring Allowance Account* (Sections 3-5)

An Account is established in the Consolidated Revenue Fund, consisting of contributions paid as described below, together with an equal amount paid by the Government. The latter also pays interest on the balance standing from time to time to the credit of the Account.

(*b*) *Contributions* (Sections 6-9)

Six per cent. of all amounts paid to each Member by way of sessional indemnity is deducted and paid into the Fund. Provision is also made for election by a Member, within one year from the commencement of the Act or from the first day of his renewed Membership, to contribute in respect of any previous Session during which he was a Member. Such a contribution is to be made in a lump sum or otherwise, with 4 per cent. interest accruing from the last payment of indemnity made during the Session in respect

of which it is paid. On ceasing to be a Member a person may revoke any such election that he has previously made, thereby depriving himself of the benefits that would have accrued; should he make such a revocation, he may not again at any time elect to make the contributions in question. The total amount of contributions payable by any Member is limited to the amount payable to a Member attending all sittings at a Session extending over a period of 65 days or more.

(*c*) *Allowances* (Sections 10-16)

Allowances are payable on cessation of membership or death. The allowance on cessation of membership consists of an annual sum of 75 per cent. of the total amount of contributions paid; if, however, the contributor has not been a Member for more than two Parliaments, or has been expelled, the total amount of his contribution is repaid as a lump sum. If a Member dies, the total amount (minus any allowance already paid) is paid as a lump sum to his executors.

No allowance is payable to Senators, public servants, or persons remunerated out of the Consolidated Revenue Fund or by an agent of Her Majesty in right of Canada. An allowance may also be reduced by any amount payable to the ex-Member in question under the Old Age Security Act or by way of non-contributory annuity, pension or allowance payable out of the Consolidated Revenue Fund.

(*d*) *Regulations and Annual Report* (Sections 17-18)

Regulations prescribing rates of interest, days of payment, payment on behalf of recipients unable to manage their affairs, and for any other purposes necessary to give effect to the Act, may be made by the Governor in Council. At the end of each fiscal year a report on the administration of the Act, with a statement of receipts and payments and other relevant information, is to be laid before Parliament by the Minister of Finance.

The Act, cited as " The Members of Parliament Retiring Allowances Act ", came into force on the date of the opening of the ensuing Session. (Section 19.)

India: Uttar Pradesh (Parliamentary Emoluments).—By virtue of the Uttar Pradesh State Legislature (Officers' Salaries and Allowances) Act, 1952 (No. XI), and the Uttar Pradesh Legislative Chambers (Members' Emoluments) Act, 1952 (No. XII), the Speaker, Deputy Speaker, Chairman and Deputy Chairman of the 2 Houses in Uttar Pradesh are granted monthly allowances of 1,200 rupees a month for the principals and 600 for their deputies. Travelling allowances are also granted to them. Ordinary Members of the 2 Houses are given an allowance of 200 rupees a month as well as a travelling allowance " and a daily allowance at the rate of 10 rupees in the plains and 15 rupees in the hills ".

India: Mysore (Salaries, etc. of Ministers, Members and Secretariat).—The Mysore Ministers Salaries and Allowances Act (No. XIX of 1952) and the Mysore Legislature Salaries Act (No. XX of 1952) provide for the salaries and allowances of Ministers and Members of the Legislature. The Mysore Legislature Secretariat (Recruitment and Conditions of Service) Rules lay down the methods of appointment of members of the Secretariat and their conditions of service and salaries. The main provisions of these enactments are summarised below, the figures of salaries and allowances being *monthly*, unless otherwise stated.

1. *Ministers, Speaker of Legislative Assembly and Chairman of Legislative Council*

(*a*) *Salary.*—Rs. 900.

(*b*) *Residence Allowance.*—Rs. 250, or fully furnished residence.

(*c*) *Conveyance Allowance.*—Rs. 250, and a conveyance provided and maintained by government.

(*d*) *Travelling Allowance.*—On official journeys by rail within the State, one first-class compartment is allowed plus 4 third-class fares for servants and charges for luggage; if the journey extends outside the State, the fare for 2 first-class berths is substituted for the first-class compartment. For official journeys by road an allowance is made of 8 annas per mile for the first 50 miles and 5 annas 4 pies for any distance beyond 50 miles travelled on one day; if the journey is within the State, Rs. 25 are allowed for each day of halt at any place, but if outside the State, an allowance is made equal to the actual expenditure incurred. For air travel on official journeys, an allowance is made of one and a half times the single fare.

(*e*) *Sumptuary Allowance.*—The Prime Minister (but no other Minister) is entitled to a sumptuary allowance of Rs. 5000 per annum. The Speaker and Chairman are each entitled to an allowance of Rs. 1000 per annum.

(*f*) *Medical Attendance.*—Ministers and their families only are entitled to free hospital accommodation and medical attendance and treatment.

2. *Deputy Speaker and Deputy Chairman*

The salary of each of these Officers is Rs. 350; their allowances are the same as those of ordinary Members (see below).

3. *Members*

(*a*) *Salary and Daily Allowance.*—A Member's salary (Rs. 150) accrues from the date of election or nomination, as the case may be, but is not payable until the Member has taken the oath. In addition, a daily allowance of Rs. 15 is paid for attendance at each meeting; Members who live outside the municipal limits of the place of meeting are also entitled to a similar allowance in respect of the day preceding and the day following each meeting.

(*b*) *Residence and Travelling Allowances.*—Members who reside outside the prescribed distance (not stated in the Act itself) are also entitled to a travelling allowance to and from each meeting of twice the first-class fare or, if journeying by road, 8 annas per mile.

Ministers, the Speaker and the Chairman may not draw salaries and allowances as Members in addition to the salaries and allowances pertaining to their offices. A similar restriction is applied to the Deputy Speaker and Deputy Chairman in respect of their salaries only.

4. *Secretariat*

The Secretariat is divided into Gazetted and Non-Gazetted Officers. The former are the Secretary and Assistant Secretary; the latter consist of a Ministerial Establishment, a Reporting Establishment and the Personal Establishments of the Chairman and Speaker. There is also a Menial Establishment. Detailed particulars relating to Non-Gazetted Officers and Menials are not given here.

(*a*) *Salary.*—The salary of the Secretary is Rs. 800, rising by increments of Rs. 50 to Rs. 1,200; that of the Assistant Secretary is Rs. 300, rising by increments of Rs. 25 to Rs. 500. Any allowances paid are governed by Rules for the time being applicable to Members of the corresponding grade in the Government Secretariat.

(*b*) *Method of Appointment.*—The Secretary and Assistant Secretary are appointed by the Rajpramukh after consultation with a Board consisting of the Chairman and the Speaker; it should be noted that the Secretary and Assistant Secretary perform their functions for both Chambers. Appointments may be made either from a lower position in the Secretariat, by direct recruitment, or by transfer from the State Services. All candidates must be Bachelors of Laws; if the appointment is made by direct recruitment, a candidate for the post of Secretary must be a Bachelor of Laws of at least 7 years' standing, and not more than 40 years of age, and a prospective Assistant Secretary must be of at least 5 years' standing and not more than 35 years of age. Selection of candidates by direct recruitment is made in consultation with the Public Service Commission.

(*c*) *Conditions of Service.*—The Secretary and Assistant Secretary may only be punished by the Rajpramukh after consulting the Board. Leave other than casual leave requires the sanction of the Board and the Rajpramukh; casual leave to the Secretary may be granted by either member of the Board, and to the Assistant Secretary by the Secretary.

Southern Rhodesia (Remuneration and Free Facilities—Air Travel).—The Rule in regard to free air travel was extended to permit a Member, living outside his constituency, to travel by air to his constituency 4 times in a calendar year when Parliament is not in session. (1952 VOTES, p. 549.)

XXII. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1951-52

COMPILED BY THE EDITORS

The following Index to some points of Parliamentary procedure, as well as Rulings by the Speaker and Deputy Speaker of the House of Commons given during the First Session of the XLth Parliament of the United Kingdom of Great Britain and Northern Ireland (15 Geo. VI and 1 Eliz. II) are taken from the General Index to Volumes 493 to 505 of the Commons *Hansard*, 5th series, covering the period October 31, 1951, to October 30, 1952.

The respective volume and column reference number is given against each item, the figures in square brackets representing the number of the volume, thus " [498] 1079 " or " [503] 283-5, 296 ". The references marked with an asterisk are not indexed in *Hansard* under the heading " Speaker and Deputy Speaker, Rulings of ", and include some decisions of Chairmen of Committees.

Minor points of procedure are not included nor are isolated remarks by the Chair or Rulings having relevance solely to the text of individual Bills. It must be remembered that this is an index, and that full reference to the text itself is generally advisable.

Adjournment
—*of Debate, see* Debate
—*of House*
—legislation cannot be discussed on [500] 823, etc.
—notice to raise matter on, correct wording [497] 626, [498] 411-12
—out of order if no ministerial responsibility [505] 970-1, 975, 1432-4
—*of House (Urgency) Motion for*
—*refused*
—air attack on Yalu River power plants, no ministerial responsibility [502] 2052-50
—atomic weapons, use of in Korea, hypothetical [494] 218
—British troops used to guard prisoner of war camps in Korea, long continuing matter [502] 928-9
—Central African Federation, no urgency [499] 407-12
—compassionate leave to a soldier, action in ordinary course of law [501] 699-70
—Defence Minister's speech, no urgency [503] 438-9
—farming costs, special price review, notice of raising on adjournment already given [494] 1723-4
—foot and mouth standstill order, action in ordinary course of law [500] 389
—French newspaper article, facts in dispute [500] 1630-2
—House of Commons catering staff dismissals, moved after proper time [504] 1689
—resignation of Chairman of Iron and Steel Board, no ministerial responsibility [496] 715-6
—steel price increases, covered by ordinary procedure [496] 714
—wages councils, reference back of agreed proposals to, action in ordinary course of law [504] 41-4

Amendments
—*can only be dealt with one at a time [499] 813, [500] 208

Amendments (*continued*)
—selection of, *see* Chair
see also Money, public

Anticipation
—of a bill, out of order in debate on a Motion [503] 803

Bills, Private Members'
—may be taken up by another Member if original sponsor becomes a Minister [498] 1078-9
see also Debate

Bills, Private, *see* Debate

Bills, Public
—3*R*
—may be moved although not on the Order Paper [503] 471-2
—may be taken immediately after Report Stage [503] 1459
—allocation of time orders on
—" allotted day ", interpretation [499] 662-3, 665, 744-5
see also Debate

Chair
—*Amendments, selection of*
—*applies also to manuscript amendments [494] 1287-8
—*cannot be debated [498] 2085
—customarily calls a Privy Councillor if he rises [504] 151

Clerk
—*must not be criticised [496] 1402

Closure
—motion for
—cannot be interrupted by point of order [499] 594
—cannot be withdrawn once question has been put [497] 613
—may be moved while a Member is speaking [499] 624-5
—*if accepted by the Chair, is entitled to be accepted [504] 478

Committees of the whole House, *see* Debate

Committees, Standing, *see* Divisions

Count
—member who has called, may withdraw from Chamber [503] 1757

Crown
—directions to House as to procedure on demise of [495] 943-4

Debate
—*Adjournment of*
—motion only acceptable between speeches [495] 248
—*Bills, Private*
—on British Transport Commission Bill, limited (apart from administration of Railway Executive) to actual provisions of Bill [497] 105-6, etc.
—*Bills, Public*
—2*R*
—discussion of past administration not in order [498] 1284, 1287
—*CWH*
—*members can speak as often as they like [498] 1480
—*past parliament may not be discussed on a motion to report Progress [498] 2932-3
—*Report*
—long interruption out of order as second speech [500] 755
—second reading speech out of order [497] 2447

Debate (*continued*)
—*Lords Amendments*
—comment on next amendment in order, if connected in substance with present amendment [505] 1515
—*Allocation of time orders*
—discussion of merits of bill not in order [499] 474
—" back-chat " between two sides of the House [502] 573
—speech may not be made in interruption of another speaker [503] 1192

Divisions
—*taking place in Standing Committee at same time as in House [501] 1373-4
—question should be put again after an irregularity in [498] 2808-10, 2814-16

Finance, *see* Money, public

" Hansard "
—Official Report distinct from Votes and Proceedings [505] 731-2
—typscript Reports, alterations in [494] 1734, 1737

Interest, *see* Member(s)

Judges
—actions of, should not be challenged except upon substantive motion [505] 976
—judicial officers may not be criticised [493] 591

King, *see* Crown

Lords, House of
—Amendments by, *see* Debate
—imputations of telling lies must not be made against Member of [498] 811
—Ministerial statements in, may be quoted [505] 624-5
—quotation from speech in, during same Session, not in order [498] 288

Member(s)
—accused of something by name, should be given opportunity to explain [500] 1850, 1851
—allegations against, not in order [504] 120
—articles which may not be brought into Chamber by [498] 2750-1
—can speak twice by leave of House, but must be called by Chair first [496] 811
—charge that Member is abusing rights as a Privy Councillor not in order [504] 137
—ladies, may bring handbags into Chamber [498] 2752
—may not bring weapons into Chamber [503] 1963
—may quote from newspaper [493] 262
—may not read speeches, but may use copious notes [497] 585
—*metaphorical threat of violence by, in order [503] 1094
—need not declare financial interest, but may not vote [505] 1306
—production of exhibits by, not necessarily disorderly [498] 2751
—provocative remarks by, not out of order [496] 977
—punching of, by another Member, not in order [494] 1842
—reminiscences by, out of order [502] 636
—should always be described as " honourable " [504] 534
—should not make attacks in Parliament on people who cannot answer back [498] 25
—should not make charges of corruption [503] 2341
—should not make charges of dishonesty [503] 751
—*should not shout across the floor of the House at each other [501] 1583
—should pass from Chamber quietly and without talking [503] 579
—should try to be responsible for statements made [496] 817

Member(s) (*continued*)
—throwing an egg at, out of order [496] 690
—two Members must not stand and argue on floor of House [500] 735
see also Bills, Private Members; Chair; Count; Ministers; Privilege; Questions to Ministers

Minister(s)
—not obliged to answer Question [493] 975, etc.
—statements by, may give rise to supplementary questions [503] 33
—*can decide whether to attend or not [503] 125
—debate cannot be allowed on statements, as no question before the House [494] 2576-7
—*may not speak again on adjournment motion without leave of House [505] 964

Money, public
—Money resolutions
—amendment to reduce the charge in order [498] 1935
—discussion of provisions of Bill out of order on report of [498] 1932

Motions
—formal mover of, entitled to speak again [499] 1173
—notice of, cannot be given if Member is absent and has not deputed another to speak in his place [501] 1371-2
—*cannot be withdrawn once question has been put [497] 613

Notices, *see* Motions; Questions

Order
—not a point of [493] 54, etc.
—points of
—hypothetical [503] 274
—raising of, not possible when House is already discussing question of order [494] 1736-7
—should be put in more temperate way [503] 275
—should not be used for making debating points [499] 550, 1430 [501] 493

Order of the day
—should be read not by the Speaker but by the Clerk [498] 787

Order Paper
—mistake in, announced to House [495] 207

Papers
—correspondence need not be laid if summarised [496] 970-2, [498] 1356-7

Parliamentary Expressions, *see* JOURNAL, Article XXIII

Petitions, Public
—matters extraneous to subject matter should not be included [501] 1328-9
—praying House to reverse something which it has not yet done, out of order [498] 802

Privilege, *see* JOURNAL

Questions to Ministers
—accuracy of, responsibility of Member putting down [498] 1900
—answering of
—by Lords, responsibility of government [503] 1504
—two together, Member may withhold permission [497] 2316
—conflict of evidence cannot be sorted out during Question Time [498] 1882
—insinuations must be kept out of [504] 1482-3
—long answers to, desirability of circulating with Official Report [500] 550
—newspaper comments, may not be based on [496] 412
—not asked, cannot be gone back to [496] 1441

Questions to Minister (*continued*)
—propriety of, responsibility of Member asking [497] 1918
—should be confined to seeking information and not for purposes of debate [502] 289
—terms of contemptuous and wounding nature should not be included in answers to [498] 1653-4
—whether answer unsatisfactory, has nothing to do with Chair [499] 30
—*private notice*
—not acceptable when minister to whom addressed has no responsibility [501] 235-6
—not normally acceptable when Question on same subject already put down [499] 1228
—*supplementary*
—cannot be pursued after notice given to raise matter on adjournment [497] 1557
—if question out of order when tendered at Table, equally so as a supplementary [498] 2724
—refusal by Table not valid ground for asking [503] 425
—*should not contain objurgatory words [497] 626

Secret Sessions
—disclosure of matters discussed in, would be contempt of the House [494] 224

Serjeant-at-Arms
—*has no jurisdiction except by order of House or Chair [498] 2572

Speaker (Mr.)
—can start speakers but cannot stop them [497] 1749
—casting vote on leave to bring in a Bill [502] 2057
—deception of, not in order [496] 799
—has not control over length of speeches [504] 1601

Statutory Instruments
—definition of period during which prayers may be moved against [497] 1515, 1520
—waste of parliamentary time to discuss annulment of a Statutory Instrument which has ceased to operate [497] 1508-14

Supply
—legislation cannot be discussed [504] 1165

"You"
—only applies to occupant of Chair [494] 1805

XXIII. EXPRESSIONS IN PARLIAMENT, 1952

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

"absolute untruth". (*V. & P. Brit. Columbia*, March 10, 1953.)
"biggest racialist in the House". (*77 Union Assem. Hans.*, 411.)
"cheap and vulgar abuse". (1951-52 *Trinidad Hans.*, 593.)
"cheeky man". (498 *Com. Hans.*, 2816.)
"frivolous". (498 *Com. Hans.*, 760.)
"leprechaun". (501 *Com. Hans.*, 1872.)

" obscene ". (498 *Com. Hans.*, 3030.)
" one man's show " (describing the dominating position of a Member in his constituency). (1952 *Madras Leg. Ass. Hans.*, Vol. II, p. 113.)
" rode roughshod over the minority party ". (1952 *Can. Com. Hans.*, 2523-4.)
" scandalous behaviour of the Government ". (78 *Union Assem. Hans.*, 5915.)
" squealing " (78 *Union Assem. Hans.*, 3614.)
" stunt ". (1952 *Mysore Leg. Co. Hans.*, Vol. I, p. 335.)
" that an hon. Member ought to be in the Tower ". (494 *Com. Hans.*, 1318.)
" vested interests ". (503 *Com. Hans.*, 613.)

Disallowed

" a damn good thing, too ". (494 *Com. Hans.*, 1773.)
" a wicked mis-statement of the truth " (498 *Com. Hans.*, 278.)
" absolutely and basically false ". (*Queensland Hans.*, pp. 178-9.)
" agents of Pakistan ". (*India, H. of P. Debates*, December 5.)
" All India Cowards Committee " (applied to All India Congress Committee). (*India, H. of P. Debates*, July 22.)
" big-bellied, flat-nosed, Yankee-speaking pilot-fish ". (1951-52 *Trinidad Hans.*, 578.)
" bloke who was sacked ". (1952 *S. Rhod. Hans.*, 684.)
" broke ". (1952 *S. Rhod. Hans.*, 2887.)
" cant ". (504 *Com. Hans.*, 150.)
" cock-crowing ". ((1951-52 *Trinidad Hans.*, 1470.)
" contemptible ". (1952 *Can. Com. Hans.*, 1792.)
" could not imagine anything lower in the political life of the country ". (298 *N.Z. Hans.*, 1384.)
" courts of law rode to orders ". (297 *N.Z. Hans.*, 614.)
" courts recruited from the Orange Benches opposite ". (35 *N.I. Com. Hans.*, 1761.)
" cowardly insinuations ". (78 *Union Assem. Hans.*, 3673.)
" criminals ". (*India, H. of P. Debates*, July 22.)
" crypto-communists on the other side ". (79 *Union Assem. Hans.*, 6154.)
" damned ". (35 *N.I. Com. Hans.*, 526.)
" definite untruth ". (78 *Union Assem. Hans.*, 5486.)
" deliberately mislead the House ". (298 *N.Z. Hans.*, 2084-5.)
" disgrace to Saskatchewan " (applied to a Member). (1952 *Can. Com. Hans.*, 1603.)
" disown their British inheritance " (298 *N.Z. Hans.*, 1869.)
" distort ", " distortion ". (77 *Union Assem. Hans.*, 2816; 78 *ibid.*, 3649.)
" double dealing ". (78 *Union Assem. Hans.*, 5219.)
" eel ". (297 *N.Z. Hans.*, 220.)

" false accounts ". (1952 *Mysore Leg. Assem. Hans.*, Vol. VII, 950.)
" filibuster ". (496 *Com. Hans.*, 1454.)
" filthy statement ". (298 *N.Z. Hans.*, 922.)
" foreign King ". (35 *N.I. Com. Hans.*, 26-7.)
" fraud ". (78 *Union Assem. Hans.*, 5176.)
" Goonda ". (*Pakistan Const. Assem. Hans.*, Vol. II, No. 11, p. 613.)
" Government influenced by minority and influential bodies ". (1951-52 *Trinidad Hans.*, 1849.)
" Government receives dictation from an outside body ", " has done something at the dictation of a group of people ". (297 *N.Z. Hans.*, 888; 298 *ibid.*, 917-9.)
" grin like a Cheshire cat ". (297 *N.Z. Hans.*, 573.)
" hon. Ministers, even if they were in the House, would be sleeping ". (1952 *Mysore Leg. Assem. Hans.*, Vol. VIII, p. 333.)
" hypocrisy ", " hypocritical ", " hypocrites ". (499 *Com. Hans.*, 1769; 500 *ibid.*, 1854; 297 *N.Z. Hans.*, 474, 480; 78 *Union Assem. Hans.*, 3730.)
" hypocrisy and political dishonesty ". (79 *Union Assem. Hans.*, 6311.)
" I do not like the smell of this section ". (1952 *S. Rhod. Hans.*, 387.)
" ignorance ". (297 *N.Z. Hans.*, 885.)
" in view of the impertinent nature of the reply ". (502 *Com. Hans.*, 1198.)
" inciter ". (79 *Union Assem. Hans.*, 6312.)
" incorrect ". (297 *N.Z. Hans.*, 17, 19; 298 *ibid.*, 1154, 1263.)
" infamous lie ". (78 *Union Assem. Hans.*, 5486.)
" informers " (applied to members of public service). (49 *Kenya Leg. Co. Hans.*, 143.)
" it was a scandal that (an Hon. Member) was sent out ". (78 *Union Assem. Hans.*, 3728.)
" laughing jackass ". (297 *N.Z. Hans.*, 892.)
" lie, lies ". (498 *Com. Hans.*, 660; 505 *ibid.*, 1338; 297 *N.Z. Hans.*, 209; 77 *Union Assem. Hans.*, 1935; *Pakistan Const. Assem. Hans.*, Vol. II, No. 5, p. 294, No. 10, p. 580 and No. 11, p. 608; 1951-52 *Trinidad Hans.*, 1804.)
" mean " (imputation to Chair). (*India H. of P. Debates*, August 2.)
" monsters ". (*India H. of P. Debates*, February 29.)
" not true ". (298 *N.Z. Hans.*, 1174, 1265, 1600, 1994.)
" obstructing ". (77 *Union Assem. Hans.*, 2464.)
" one standard for Congress and another for the Opposition ". (*India H. of P. Debates*, August 2.)
" ought to be ashamed of themselves ". (297 *N.Z. Hans.*, 573.)
" outside body real parliament of N.Z.", " outside political body influencing the Government ". (297 *N.Z. Hans.*, 900; 298 *ibid.*, 916.)

" outraged maiden " (referring to a Minister). (*India H. of P. Debates*, December 5.)
" past master of underhand campaigns ". (1952 *Can. Com. Hans.*, 1792-3.)
" political rogue ". (78 *Union Assem. Hans.*, 3838.)
" public tripe ". (1952 *S. Rhod. Hans.*, 1632.)
" ragged rabble ". (298 *N.Z. Hans.*, 921.)
" rt. hon. Gent. has directly falsified the facts ". (497 *Com. Hans.*, 2059.)
" running of blood ". (1951-52 *Trinidad Hans.*, 1477.)
" showed a rather extraordinary concern for the black-marketeers ". (77 *Union Assem. Hans.*, 1952.)
" shut up ". (297 *N.Z. Hans.*, 675.)
" silly and stupid ". (1951-52 *Trinidad Hans.*, 1257.)
" so-called mother of Shri Aurobindo Ashram ". (*India H. of P. Debates*, June 11.)
" son was forced to cohabit with his mother ". (*India H. of P. Debates*, February 29.)
" sordid " (applied to ministerial methods). (78 *Union Assem. Hans.*, 5200.)
" spies " (applied to members of public service). (49 *Kenya Leg. Co. Hans.*, 143.)
" stooge ". (493 *Com. Hans.*, 362; 498 *ibid.*, 1583.)
" talking rot ". (*India H. of P. Debates*, December 19.)
" thieves " (applied to Ministers). (*India H. of P. Debates*, July 25.)
" twisting ". (78 *Union Assem. Hans.*, 3623.)
" untrue ". (500 *Com. Hans.*, 1854; 297 *N.Z. Hans.*, 118, 517; 298 *ibid.*, 1183, 1265; 80 *Union Assem. Hans.*, 8883.)
" why the hell ". (*Pakistan Const. Assem. Hans.*, Vol. II, No. 10, pp. 581-2.)
" you are jumping from one branch to another like monkeys ". (1952 *Mysore Leg. Co. Hans.*, Vol. I, p. 62.)
" you are the rottenest ". (77 *Union Assem. Hans.*, 2607.)
" you did not " (addressed to the Chair). (498 *Com. Hans.*, 1982.)

Borderline

" Challenge " held to be parliamentary, but not " challenge for a fight ". (1952 *Madras Leg. Ass. Hans.*, Vol. I, p. 183.)
" rt. hon. Gentleman is an authority on offence " (not heard by Speaker but voluntarily withdrawn by utterer). (497 *Com. Hans.*, 2320-1.)
" scurrilous " Ruled to be in order if applied not to a Member but to an expression. (502 *Com. Hans.*, 815.)
" you rat " (not heard by Deputy Speaker, who said that had he heard it, he would have deprecated it). (504 *Com. Hans.*, 1527.)

Camden Miscellany, Vol. XX. (London: Royal Historical Society, 1953.)—This volume contains 3 items, of which only the last 2 are of direct interest to members of the Society. This is fortunate, as the first item, which consists of a brief survey of the law courts as they were about the year 1600, is marred by several horrid errors on the part both of the editor and the original author.

The second item consists of " the Hastings Journal of the Parliament of 1621 ", a brief and incomplete record of the speeches and proceedings in the House of Lords on certain days between January, 1621, and May, 1622. Certain points of interest emerge:

1. The possibility that members of the House of Commons might use their privilege of freedom from arrest for debt to defraud their creditors was already causing anxiety to the Government. This anxiety, in the course of the eighteenth century, led to the passage of 3 or 4 Bills restricting such privilege.

2. It is a fortunate chance that a good part of this diary deals with the original production of the first Roll of the Standing Orders of the Lords in 1621. In particular, an amusing light is thrown upon the origin of Standing Order No. XV: " If there be any difference in the form or style of the writs from the ancient, it is to be examined how it came to pass ". It now appears that an unfortunate clerk in the Petty Bag Office, one Cammell, had left out the words " Our well-beloved and trusty " from some of the barons' writs. For this offence he was reprimanded on his knees at the Bar, and imprisoned for 2 days.

3. A new method of voting in the House is disclosed. In the sixteenth century and earlier, the Lords had voted by saying, as their names were called by the Clerk, " Content " or " Not Content ". In 1621, however, they voted by " sitting and standing ". " My Lord of Essex counted the Not Contents that sat and I (Lord Hastings) the Contents that stood up ". In the second half of the seventeenth century the Lords imported from the Commons the alien practice of dividing the House by sending the Contents outside the Bar, while the Not Contents remained within the House.

4. Three or 4 speeches of James I are reported verbatim. They show that James was an easy and effective speaker, and, moreover, a man of some erudition, who could fully understand and appreciate, and even probably to some extent directed and took part in, the wave of antiquarian and scholarly search into the procedure of Parliament that was going on during his reign under the aegis of men like Bacon and Coke, Selden and Cotton, Hakewill and Prynne. It is likely that the King must take a good deal of the responsibility, for example, for the revival of impeachment in 1621; and, indeed, he even came unexpectedly down to the Lords in that year in order to promote the adoption of this procedure.

The third item in the volume is " the Minute Book of James

Courthope ", most ably edited by Orlo Cyprian Williams, C.B., M.C., D.C.L., late Principal Clerk of Committees and Private Bills in the House of Commons. Dr. Williams's introduction gives the background to this Minute Book. There were 4 Committee Clerks at the time the book was written (about 1700), and their duties were much the same as those of Committee Clerks of the present day. Of the numerous books of committee minutes that they must have kept, this seems to be the only survivor, and is therefore particularly interesting for the light it throws upon late seventeenth-century committee procedure. Members will be horrified to hear that committees sat at 8 o'clock in the morning every day, including Saturday, and that the yearly salary of the Clerks in 1698 was 25 guineas, plus about £30 in fees.

It was the custom in those days to refer Bills to committees with blanks for all the points that had to be specified by numbers, dates, proper names, quantities, penalties, etc. These blanks were filled in by the committee; and a vestige of this practice still remains in the name " Filled-up Bill " which is still given to that copy of a Private Bill which leaves the Select Committee. An interesting account of the genesis of a Bill in those times is given, on the subject of the registration of births, marriages and burials. The course of proceedings was as follows: On March 31, 1698, a petition was presented to the House from certain persons who had advanced money on the security of the fees collected on the registration of births, marriages and burials. The petition was referred to a committee, before whom the agents of the Exchequer were ordered to appear and disclose (April 6) their view of the reasons for the deficiencies in the collection of the fees. On April 16, the agents produced to the committee a list of 5 proposals for remedying these deficiencies. On April 20 this list was discussed by the committee, and, by the addition of suggestions from members of the committee, was expanded to 10 articles, of which 2 were then negatived on a division in the committee. The Chairman was then ordered to prepare and present a Bill to the House, which he did on May 28. The Bill was committed to a Committee of the Whole House on May 31 and eventually passed. (It is interesting to note that Sir Isaac Newton, who was then on the staff of the Mint, appeared before this same committee.)

The course of proceedings before the committee on the Aire and Calder Navigation Bill on March 1, 1689, anticipates almost exactly the procedure of a Select Committee on a Private Bill today. This is particularly interesting, inasmuch as, during the eighteenth century, counsel and witnesses on Private Bills were heard at the Bar of the House, and not before Select Committees. The modern procedure, therefore, is not—as some have been tempted to suppose —a nineteenth-century innovation, but a reversion to the more ancient parliamentary practice.

The record of proceedings contained in this Minute Book was never, of course, intended for publication, or indeed as anything but notes for the report of the committee and the relevant entries in the JOURNALS of the House. It is, however, none the less regrettable that Mr. James Courthope's methods should have been so extremely slapdash and confused. There is often no indication of what Bill or matter is under discussion; several pages are sometimes left blank; there is no record, very often, of a committee having met on the day appointed; and in general, it may be supposed that Mr. Courthope would have blushed to see his "scribbled book" thus exposed in cold print by a learned society; but his shame is our gain.

XXV. LIBRARY OF "THE CLERK OF THE HOUSE"

BY THE EDITORS

Following the practice of our predecessor, we here include a list of books (published in 1952) which deal with constitutional and parliamentary matters and might profitably be added to the personal library of a Clerk of the House:

British Colonial Constitutions, 1947. By *Martin Wight.* (Clarendon Press.) 42*s.*

The Parliament of Canada. By *George Hambleton.* (Toronto, The Ryerson Press.) $3.00.

Principles of Administrative Law. By *J. A. G. Griffith and H. Street.* (Pitman.) 30*s.*

The British General Election of 1951. By *D. E. Butler.* (Macmillan.) 21*s.*

Printer to the House: the Story of Hansard. By *J. G. Trewin and E. M. King.* (Methuen.) 22*s.* 6*d.*

The British Cabinet System. By *Arthur Berriedale Keith*; second edition by *N. H. Gibbs.* (Stevens.) 37*s.* 6*d.*

Materials on American National Government. Edited by *J. M. Swarthout* and *E. R. Bartley.* (Oxford.) $2.95.

The Australian Constitution: an Analysis. By *H. S. Nicholas.* (2nd edition.) (Stevens.) £3 10*s.*

The Statute of Westminster and Dominion Status. By *K. C. Wheare.* (5th edition.) (Oxford.) 21*s.*

Sociologie Electorale. By *François Goguel and Georges Dupeux.* (Paris, Librairie Armand Colin.)

Géographie des Elections Françaises de 1870 a 1951. By *François Goguel.* (Paris, Librairie Armand Colin.)

Die Grundgedanken des Grundgesetzes für die Bundesrepublik Deutschland. By *Hans Nawiasky.* (Cologne, W. Kohlhammer Verlag.)

The Electoral System in Britain, 1918-1951. By *D. E. Butler.* (Oxford.) 21*s.*

The Party System in Great Britain. By *Ivor Bulwer-Thomas.* (Phoenix House.) 25*s.*

Introduction to French Local Government. By *B. Chapman.* (Allen and Unwin.) 18*s.*

The Changing Law. By *Sir Alfred Denning.* (Stevens.) 10*s.*

The Essentials of Public Administration. By *E. N. Gladden.* (Staples.) 17*s.* 6*d.*

The Supreme Court and Judicial Review in India. (Indian Institute of Public Administration.) 6*s.*

Maxwell on the Interpretation of Statutes. By *G. G. Sharp* and *B. Galpin.* (Sweet and Maxwell.) £2 5*s.*

XXVI. RULES AND LIST OF MEMBERS

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1. The name of the Society is " The Society of Clerks-at-the-Table in Empire Parliaments ".

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2. Any Parliamentary Official having such duties in any Legislature of the British Commonwealth of Nations as those of Clerk, Clerk-Assistant, Secretary, Assistant-Secretary, Serjeant-at-Arms and Assistant-Serjeant, or any such Official retired, is eligible for membership of the Society upon payment of the annual subscription.

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3 (*a*). The objects of the Society are:

(i) To provide a means by which the Parliamentary practice of the various Legislative Chambers of the British Commonwealth of Nations may be made more accessible to Clerks-at-the-Table, or those having similar duties, in any such legislature in the exercise of their professional duties;

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3 (*b*). It shall not, however, be an object of the Society, either through its JOURNAL or otherwise, to lay down any particular

principle of Parliamentary procedure or constitutional law for general application; but rather to give, in the JOURNAL, information upon those subjects, which any Member may make use of, or not, as he may think fit.

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4. The annual subscription of each Member shall be 25*s*. (payable in advance).

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6. In order better to acquaint the Members with one another and in view of the difficulty in calling a meeting of the Society on account of the great distances which separate Members, there shall be published in the JOURNAL from time to time, as space permits, a short biographical record of every Member. Details of changes or additions should be sent as soon as possible to the Joint-Editors.

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7. One copy of every publication of the JOURNAL shall be issued free to each Member. The cost of any additional copies supplied to him or any other person shall be 35*s*. a copy, post free.

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8. The Officials of the Society, as from January, 1953, shall be the two Joint-Editors (appointed, one by the Clerk of the Parliaments, House of Lords, and one by the Clerk of the House of Commons, in London). One of the Joint-Editors shall also be Secretary of the Society, and the other Joint-Editor shall be Treasurer of the Society. Only Officers or retired Officers of a Legislature as aforesaid are eligible for the post of Editor, Secretary or Treasurer. An annual salary of £150 shall be paid to each Official of the Society acting as Secretary or as Treasurer.

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9. Authority is given to the Treasurer of the Society to open a banking account in the name of the Society as from the date aforesaid, and to operate upon it, under his signature; and a statement of account, duly audited, and countersigned by the Clerks of the 2 Houses of Parliament in that part of the Commonwealth of Nations in which the JOURNAL is printed, shall be published in each annual issue of the JOURNAL.

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XXVII. 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.*

Briggs, Edgar Charles.—Clerk of the Legislative Council, Tasmania; *b.* June 7, 1898; *m.* 1925; one *s.*, 3 *d.*; *ed.* Longford State School and Launceston High School; entered the Tasmanian Public Service, November 1, 1914; held positions in Lands' Titles Department, Audit Department, Public Works Department and Mines Department, including positions of Secretary to Minister for Lands and Works, and Chief Clerk and Accountant of Department of Mines; on Active Service with 12th Infantry Battalion in France and Belgium, 1916-19; wounded in action, 1917; commissioned Lieutenant, 1918; served in Australian Military Forces, 1940-46; awarded Efficiency Medal, A.M.F.; held postings of Adjutant 6th Garrison Battalion (Coast Defence), 2 i/c Infantry Training Battalion, officer commanding 6/30th Garrison Battalion and Brighton Prisoner-of-War Camp; promoted Major, 1941; appointed Clerk-Assistant and Usher of the Black Rod of the Legislative Council on August 1, 1946; appointed Clerk of the Council, January 21, 1953.

Dodd, A. F. R., A.U.A.—Clerk-Assistant and Serjeant-at-Arms of the House of Assembly of South Australia; *b.* 1917; *ed.* Unley High School and University of Adelaide; Clerk in Department of Lands, 1934-48; Office Clerk and Secretary, Joint House Committee, 1948-53; Active Service with Royal Australian Air Force as Commissioned Navigator-Bombardier, 1940-45; appointed to present position, April, 1953.

* Barrister-at-Law or Advocate.

Jeffreys, A. H.*—Reading Clerk and Clerk of Outdoor Committees, House of Lords; Clerk of Private Bills and Taxing Clerk, 1919; Examiner of Petitions for Private Bills, 1941; Chief Clerk of Committees and Private Bills and Taxing Officer, 1945; in addition appointed present office, 1953.

Kharabe, S. R., B.A., LL.B. (Nagpur University).—Under-Secretary to Madhya Pradesh Legislative Assembly (Clerk-Assistant); *b.* October 20, 1910; joined Legislative Assembly Department December 9, 1933; appointed Under-Secretary, December 23, 1952 (A.N.), prior to which Superintendent in the Law Department and Legislative Assembly Secretariat, Madhya Pradesh, Nagpur.

Lidderdale, D. W. S.—Fourth Clerk-at-the-Table, House of Commons, since April, 1953; *b.* September 30, 1910; *ed.* Winchester College and King's College, Cambridge; M.A.; an Assistant Clerk, House of Commons, 1934; commissioned in The Rifle Brigade, 1939; Active Service in N. Africa and Italy, 1942-45; a Senior Clerk, 1945; Joint Secretary to the Autonomous Section of Secretaries-General of Parliaments (Inter-Parliamentary Union), since 1946.

McLachlan, H. K., J.P.—Clerk of the Legislative Assembly and Clerk of the Parliaments, Victoria, Australia, since April, 1951; *b.* 1896, Hawthorn, Victoria; Clerk in Lands Department, 1914, and in State Public Service Commissioner's Office, 1914-17; appointed to the Parliamentary Staff in 1917; Assistant-Clerk of the Papers, 1922-27; Clerk of the Papers, 1927-37; Clerk of the Committees and Serjeant-at-Arms, 1937-41; Clerk-Assistant, 1941-51; Honorary Secretary of the Commonwealth Parliamentary Association (Victoria Branch) from 1951.

Montgomery, Thomas Russell.—Clerk-Assistant of the Canadian House of Commons; *b.* September 23, 1893, at Ottawa; *s.* of William J. Montgomery and Margaret Moore, both Canadians; *ed.* at Ottawa Public and High Schools; *m.* October 7, 1918, to Mabel, *d.* of John Stewart, Montreal; 3 *c.*: Kathleen, Doris and Stewart; entered the Public Service in 1912; appointed to the House of Commons staff in 1915; appointed Clerk-Assistant, February 29, 1952; Secretary, Civil Service Association of Ottawa, 1928-38; President, 1939-45; Member of Board of Governors of Carleton College; Member of Executive of Ottawa Red Cross Society and Civil Service Federation of Canada; religion, United Church; address, 106, Patterson Avenue, Ottawa, Ontario.

Muhammad Iqbal, Chaudhri, B.A.(Alig.).—Assistant Secretary, Punjab Legislative Assembly; *b.* Amritsar, October 16, 1908; *ed.* Muslim University, Aligarh, graduated in 1930; joined the establishment of the then Punjab Legislative Council, 1931; Assistant in the Imperial Secretariat, Government of India, New Delhi, 1941-42; Superintendent, Directorate General of Shipbuilding and Repairs, Government of India, 1942-43; Superintendent, Lahore

* Barrister-at-Law or Advocate.

Improvement Trust, 1943-46; Superintendent, Regional Directorate of Resettlement and Employment, Punjab and N.W.F.P., 1946-47; Superintendent, West Punjab Legislative Assembly, 1947-52; appointed to present position, June, 1952.

Purvis, A. W., LL.B., D.P.A.*—Clerk of the Legislative Council of Kenya; *b.* October, 1909; *ed.* Colfe's Grammar School, Lewisham, and London School of Economics, London University; Barrister-at-Law of Gray's Inn; Clerk in London County Council, 1928-49; Administrative Secretary, Medical Department, Kenya, 1949-53; Active Service with Military Police and Military Government, 1940-46; appointed to present office, March, 1953.

Robertson, J. A.—Clerk-Assistant, Legislative Assembly, Victoria, since April, 1951; *b.* 1903, Castlemaine, Victoria; Clerk in Lands Department, 1920; transferred to the Parliamentary Staff, 1923; Assistant Clerk of the Papers, 1927; Clerk of the Papers, 1937; Serjeant-at-Arms assisting at the Table, Clerk of Committees, and Clerk of the Papers, 1941; Secretary to the House Committee, 1947-51; Clerk-Assistant, 1951.

* Barrister-at-Law or Advocate.

KENYA—*Continued.*
—Ways and Means, appointment of Chairman of, 170.
—privilege, 133.
—arrest, freedom from, 134.
—freedom of speech, 134.
—press reports, 134.
—strangers, 135.
LANGUAGE RIGHTS, (N. Rhod.), 153.
LORDS, HOUSE OF,
—reform, 136.

MALAYA,
—Parliament,
—ceremonial and regalia (Art.), 120.
MAN, ISLE OF,
—Constitutional, 137.
MAURITIUS,
—M.P.'s,
—precedence, 157.
—suspension of, 159.
—Presiding Officer, temporary, 157.
—privilege, 154.
M.P.'s,
—absence, leave of (India), 168.
—allowances,
—travel, air (S. Rhod. Leg. Ass.), 181.
—of another Legislature, reflections on (Kenya), 154.
—contracts with government (Sask.), 151.
—disqualifications,
—for Communism (Union), 104.
—naming of (Union Assem.), 106.
—nominated, voting obligations of (Kenya), 149.
—payment, allowances and free facilities to (Aust. Fed.) (Art.), 64; (Mysore), 180; (Uttar Pradesh), 179.
—pecuniary interest, (Jersey), 150; (Union), 107.
—indirect (S. Rhod. Leg. Ass.), 169.
—pensions, (Aust. Fed.) (Art.), 64; (Can. Com.), 178.
—precedence of (Mauritius), 157.
—Private Members' Bills (Com.), 160.
—resignation, letter of (India), 168.
—suspension of (Mauritius), 157.
—removal of his notices on (Union), 108.
MINISTERS,
—Executive Council, membership of (Gold Coast), 149.
—payment and free facilities to (Aust. Fed.), 64; (Mysore), 180.
—rights of, to speak in both Houses (Bihar), 153.
MONEY, PUBLIC,
—estimates, reference of to special Com. (Madhya Pradesh), 171.
—financial procedure (Kenya), 171; (Union Assem.), 170.
MONEY, PUBLIC—*Continued.*
—Public Accounts S/C (Tanganyika), 172; (Transvaal), 171.
—Supply, Com. of,
—procedure in (S. Rhod. Leg. Ass.), 169.
—Ways and Means, Chairman of, appointment (Kenya), 170.
MOTION,
—self-consistency of (Union Assem.), 105.

NATIONALISED INDUSTRIES,
—(Com.), (Art.), 44.
NEW ZEALAND,
—proposals for restored Second Chamber (Art.), 72.

OATH OF ALLEGIANCE,
—contemptuous reference to (Com.), 123.
OFFICERS OF THE HOUSE,
—appointment and conditions of service (Mysore), 181.
—payment (Mysore), 181.
OPPOSITION, LEADER OF,
—(Bihar), 153.
—designation of (B. Columbia), 150.
—salary (Aust. Fed.), 68.
ORDER,
—bringing of articles into Chamber (Com.), 158.
—Parliamentary expressions,
—*allowed*, 186.
—*disallowed*, 187.
—*borderline*, 189.
—uniform, wearing of, (N. Rhod.), 159.

PAKISTAN,
—Special Tribunal on Rawalpindi Treasonable Conspiracy, 147.
PAPERS,
—allegedly false (India H.P.), 128.
—publication of (India), 168.
PARLIAMENT,
—ceremonial and regalia (Malaya), (Art.), 120.
—Chambers, Legislative, use of, for other purposes (Aust. Rep.), 151.
—expressions in, 186.
PARTIES,
—numbers in legislatures (India), (Art.), 110.
—official Opposition, recognition of (B. Columbia), 150.
—payment to leaders of (Aust. Fed.), 68.
PETITIONS, PUBLIC,
—extraneous matter in (Com.), 172.
—leave to be heard at Bar (Union Assem.), 106.
PRESIDENT OF THE REPUBLIC,
—election of (India), 177.
—recommendations of (India), 167.

PRESIDING OFFICER,
—censure, motions of (U.K.), 155.
—payment (Aust. Fed.), 68; (Mysore), 180.
—and allowances (Uttar Pradesh), 179.
—of two Houses, relative precedence of (Bihar), 157.
—temporary (Mauritius), 157.
—*Speaker*,
—rulings,
—index to (U.K.), 182
—seat of (Union Assem.), 157.
PRIME MINISTER,
—(Gold Coast), 149.
—payment (Aust. Fed.), 67.
—pension (Aust. Fed.), 67.
PRIVILEGE,
—alleged false papers laid (India H.P.), 128.
—arrest, freedom from, 134.
—arrest and detention of Member (India H.P.), 126, 127.
—and contempt of court (" Pritt's case ") (U.K.), (Art.), 131.
—freedom of speech, 134.
—(Mauritius), 154.
—of Parliament (Art.), 133.
—paper referred to S/C.
—premature comment upon (Union Assem.), 105.
—powers and privileges (Kenya), (Sudan), (Trinidad), (Art.), 133.
—press reports,
—inaccurate (N. Rhod.), 154.
—publication of papers (India), 168
—publication of proceedings of Com. of,
—incorrect (India H.P.), 129.
—reflection on other House (Com.), 122.
—strangers, 135.
—territorial extension of (" Pritt's case ") (U.K.), (Art.), 131.
PROROGATION,
—lapse of Bill on,
—private (Natal), 167.
—public (Union), 105.

QUESTIONS TO MINISTERS,
—on nationalised industries (Com.), (Art.), 44.
—tables, etc., in *Hans.* (S. Aust.), 152.

RHODESIA, NORTHERN,
—debate,
—civil servants, impropriety of reference to, 159.
—documents, irrelevant and libellous, quotation of, 155.
—language rights, 153.
—order,
—wearing of uniform, 159.

RHODESIA, SOUTHERN,
—Examiner of Private Bills, 173.
—M.P.'s
—air travel allowances, 181.
—indirect pecuniary interest, 169.
—money, public,
—procedure in Com. of Supply, 169.

SECOND CHAMBERS,
—financial powers of (Aust. Fed.), (Art.), 61; (India), (Art.), 113.
—intercameral relations (Com.), 122, 124.
—reforms (Lords), 136
—restored, proposals for (N.Z.), (Art.), 72.
SESSION MONTHS OF PARLIAMENT, *see* back of title-page.
SOCIETY,
—JOURNAL,
—changes in form, 12.
—Editors, 9.
—members' Honours list, records of service, retirement or obituary notices, marked (*H*), (*s*), (*r*) and (*o*) respectively:
Briggs, E. C. (*s*), 201.
Clark, C. I., (*o*), 13.
Clough, E. M. O., Honorary Life President, 10.
Dodd, A. F. R., (*s*), 201.
Ingwersen, C. M., (*o*), 14.
Jeffreys, A. H., (*s*), 202.
Kharabe, S. R., (*s*), 202.
Lidderdale, D. W. S., (*s*), 202.
McLachlan, H. K., (*s*), 202.
Montgomery, T. R., (*s*), 202.
Muhammad Iqbal, C., (*s*), 202.
Murphy, C. K., (*H*), 22.
Overbury, Sir R. L., (*r*), 16.
Parker, F. L., (*r*), 18.
Purvis, A. W., (*s*), 203.
Robertson, J. A., (*s*), 203.
Wanke, F. E., (*r*), 20.
—name, 10.
—Rules, 10.
SOUTH AFRICA, UNION OF,
—adjournment of House (*Urgency*),
—lapsed on interruption of Business, 107.
—allocation of time in Committee of Supply, 164
—bills, public,
—notice of amendments to, 107.
—" stages " of, include consideration of amendments by other House, 107.
—closure on " urgent " bills, 165.
—Committees, select,
—resolution of, ruled out of order by Speaker, 165.
—constitution,
—High Court of Parliament Bill, 102, 138.

SOUTH AFRICA, UNION OF—*Continued.*
—electoral
—delimitations, 176.
—Non-Europeans (Art.), 91.
—M.P.'s,
—disqualification for Communism, 104.
—naming of, 106.
—pecuniary interest, 107.
—suspension of, removal of his notices on, 108.
—money, public,
—financial procedure, 170.
—Motion,
—self-consistency of, 105.
—petitions, public, leave to be heard at Bar, 106.
—privilege,
—paper referred to S/C, premature comment on, 105.
—prorogation,
—lapse of public Bill on, 105.
—Speaker, seat of, 157.
SOUTH AFRICAN UNION PROVINCES,
—Natal,
—accelerated Meeting, 167.
—prorogation, no lapse of private Bill on, 167
—Transvaal,
—Public Accounts S/C, 171.
STANDING ORDERS,
—suspension of,
—expedition of Business at end of Session,
—Motion opposed (Lords), 166.
STRANGERS, 135.
SUDAN,
—privilege, 133.
—press reports, 134.
—strangers, 135.

TANGANYIKA,
—Public Accounts S/C, 172.
TRIBUNAL, SPECIAL
—Rawalpindi Treasonable Conspiracy (Pakistan), 147.
TRINIDAD AND TOBAGO,
—privilege, 133.
—arrest, freedom from, 134.
—freedom of speech, 134.
TRINIDAD AND TOBAGO, privileges—*Continued.*
—press reports, 134.
—strangers, 135.

UNITED KINGDOM,
—Acts, public, consolidation of, 136.
—adjournment as mark of respect (Lords), 150.
—allocation of time (" Guillotine ") (Com.), (Art.), 52.
—Army Act and Air Force Act (Com.), (Art.), 34.
—Bills, public, explanatory memoranda on (Lords), 172.
—business, public,
—revival of a " dropped " Order (Com.), 161.
—Chairman of Ways and Means, censure on, 155
—Civil List (Art.), 23; (Lords), 27.
—Courthope's Minute Book, 190.
—" Day ", parliamentary, definition of (Com.), 58.
—delegated legislation (Lords), (Art.), 39.
—divisions, irregularity in (Com.), 159.
—Fourth Clerk at the Table (Com.), (Art.), 32.
—*Hastings Journal*, 190.
—Lords' reform, 136.
—Nationalised Industries (Com.), (Art.), 44.
—Oath of allegiance, contemptuous reference to, 123.
—Order,
—bringing of articles into Chamber, 158.
—Petitions, public, extraneous matter in, 172.
—Private Members' Bills, 160.
—privilege, 122.
—and contempt of court (" Pritt's case "), (Art.), 131.
reflection on other House (Com.), 122, 124.
—territorial extension of ("Pritt's case") (Art.), 131
—Second Chamber,
—intercameral relations, 122, 124.
—Standing Orders,
—Motion for suspension opposed (Lords), 166.

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