The Table

BEING

THE JOURNAL OF THE SOCIETY OF CLERKS-AT-THE-TABLE IN COMMONWEALTH PARLIAMENTS

EDITED BY

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

VOLUME XXII

for 1953

LONDON

BUTTERWORTH & CO. (PUBLISHERS) LTD.

88 KINGSWAY

and at

SYDNEY · MELBOURNE · BRISBANE · TORONTO

WELLINGTON · AUCKLAND · DURBAN

1955

Price 35 *Shillings*

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	No settled practice.											
CHANNEL IS.: Alderney	No settled practice.											
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 settled practice.											
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: CENTRAL LEGISLATURE		★	★	★	★			★	★		★	★
INDIAN STATES: Madras	★	★	★	★				★	★	★	★	★
INDIAN STATES: Bombay		★	★	★				★	★			★
INDIAN STATES: Uttar Pradesh	No settled practice.											
INDIAN STATES: Bihar	★	★	★	★	★				★	★		
INDIAN STATES: West Bengal		★	★	★					★	★		
INDIAN STATES: East Punjab			★	★						★	★	
INDIAN STATES: Orissa		★	★					★	★			
INDIAN STATES: Madhya Pradesh		★	★					★	★			
INDIAN STATES: Mysore			★	★								
PAKISTAN: Constituent Assembly			★	★							★	★
PAKISTAN: East Bengal		★	★							★	★	
PAKISTAN: West Punjab	No settled practice.											
PAKISTAN: North-West Frontier Province			★						★	★		
PAKISTAN: Sind		★	★					★	★			
SOUTHERN RHODESIA				★	★	★	★				★	
BERMUDA	No settled practice.											
BRITISH GUIANA	★	★		★	★	★				★	★	★
EAST AFRICA HIGH COMMISSION	★			★					★			
GOLD COAST			★			★			★			★
JAMAICA					★					★		
KENYA, FEDERATION OF MALAYA, MALTA, G.C., AND MAURITIUS	No settled practice.											
NIGERIA: HOUSE OF REPRESENTATIVES	No settled practice.											
NIGERIAN REGIONAL HOUSES OF ASSEMBLY: Northern	★	★					★					
NIGERIAN REGIONAL HOUSES OF ASSEMBLY: Eastern		★										
NIGERIAN REGIONAL HOUSES OF ASSEMBLY: Western		★					★			★		
NORTHERN RHODESIA						★	★[1]					
SINGAPORE		★	★	★	★	★	★	★	★	★	★	★
THE SUDAN			★	★	★					★	★	★
TANGANYIKA	No settled practice.											
TRINIDAD AND TOBAGO	★	★	★	★	★					★	★	★
UGANDA	★	★	★	★	★	★			★			

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

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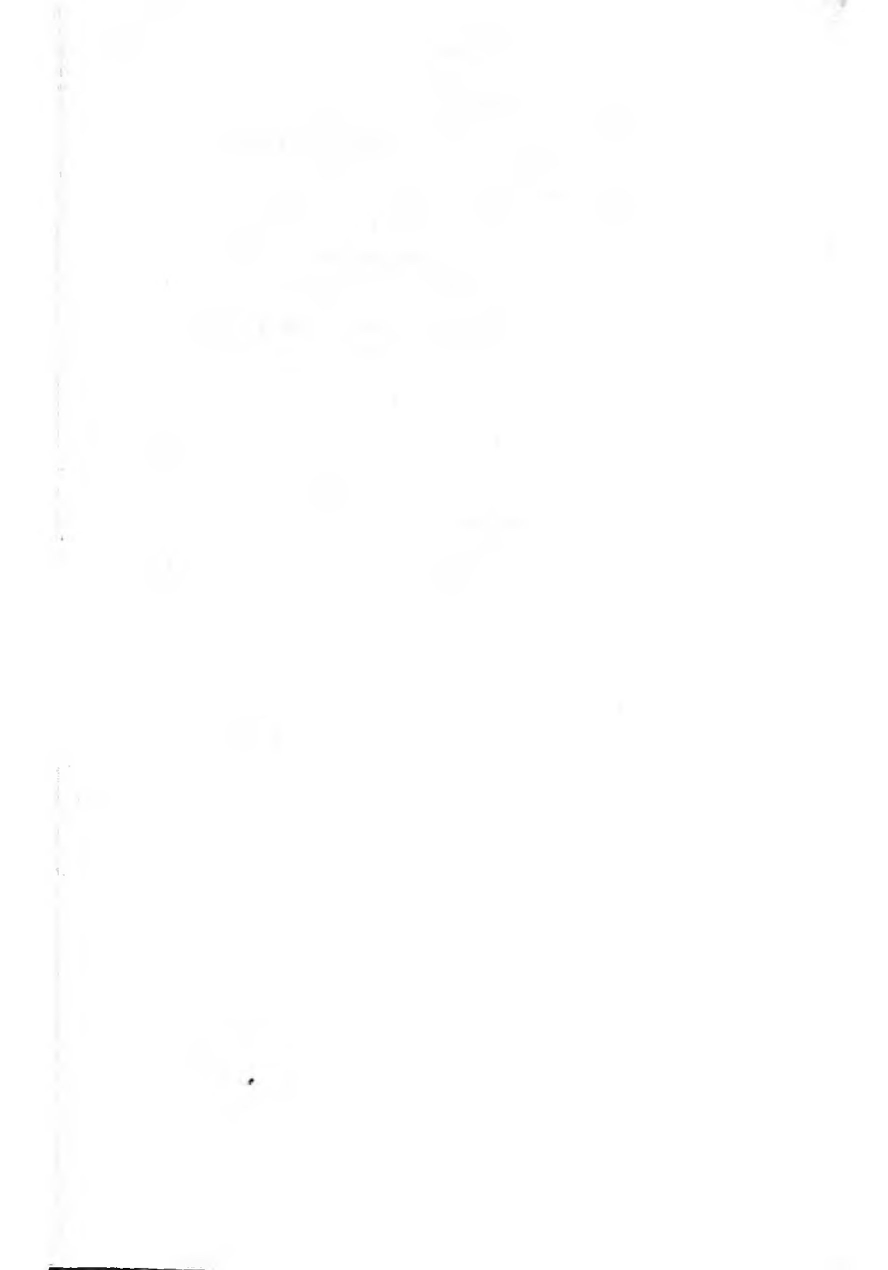


The Table

BEING

THE JOURNAL OF THE SOCIETY OF CLERKS-AT-THE-TABLE IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

Title and Constitution of the Society.—It was announced in the Editorial of Volume XXI that a majority of Members of the Society were in favour of an alteration of the Society's title; the next step has now been taken, and the new title has been decided upon. After the elimination, by the process of the "alternative vote", of 17 out of the 19 new titles which had been proposed, the new title—"The Society of Clerks-at-the-Table in Commonwealth Parliaments"—obtained a majority of 58 votes, as against its nearest rival—"The Society of Clerks-at-the-Table"—which attracted 38. The honourable designation by which the Society has been known for more than twenty years has now been superseded by another no whit less honourable and, we hope, of equal or longer duration.

By the same ballot, certain amendments to the Rules of the Society were agreed to. The Rules, as amended, are printed on p. 187 of this Volume; as announced in last year's Editorial, it is not proposed to reprint them until such time as further amendments have been made.

Members have also decided in favour of a shorter name for the JOURNAL. This will be a boon to those, such as your Editors, who have to make frequent reference to it in speech and writing; in order, however, to prevent confusion (gastronomical or otherwise), we shall continue to print the words "Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments" as a sub-title.

Introduction to Volume XXII.—1953 was in a very real sense a Royal year, and Members will find this reflected in the present Volume. Article II records proceedings of twelve Houses within our membership in specific connection with Her Majesty's Coronation on 2nd June. In other legislatures incidental references were made (as, for example, by Governors-General, etc., in their Speeches from the Throne); these have been too numerous to record.

The second major Royal event was the beginning of the Common-

wealth Tour of Her Majesty and H.R.H. the Duke of Edinburgh. Before the conclusion of 1953, Her Majesty had set foot in Bermuda, Jamaica, Fiji, Tonga and New Zealand; descriptions of specifically Parliamentary occasions in all these countries (with the exception of Tonga, in which none took place), compiled by the Clerks of the respective legislatures, are brought together in Article III. It is hoped to include in Volume XXIII a further series of such descriptions from the countries which Her Majesty subsequently visited.

Thirdly, the visit of Her Majesty Queen Elizabeth the Queen Mother to the Parliamentary Exhibition in Southern Rhodesia is described in Article IV.

Members have been asked, in this and a previous year, to supply information regarding the practice of their legislatures on the admission to the Chamber and precincts of members of the Press. An article has been compiled from the information thus provided.

During 1953 the House of Lords discussed the question of its own reform in three separate contexts, namely, a Bill to provide for the appointment of a number of Life Peers, a Motion to limit the voting rights of Peers, and the debate on the Address. The opinions which emerged from these debates are brought together in Article VI.

Mention was made in the last Volume (p. 43) of the setting up by the House of Commons of a Select Committee on Delegated Legislation. The Report of this Committee, which was presented to the House during 1953, forms the subject of Article VII. In the present age there appears to be little hope of the disappearance of delegated legislation, and each legislature evolves its own method of dealing with it. The Editors would neither wish nor dare to claim that the method of the House of Commons in this respect is pre-eminently suitable for export; we believe, nevertheless, that the consideration of the problem has reached a more advanced stage in this country than in others, and have therefore decided, at the risk of wearying our readers, to give the Report of the Select Committee very full treatment.

The Select Committee on Nationalised Industries presented during 1953 a second and final Report, which is the subject of an article by the Clerk of that Committee. There is also a short account, by the Clerk of the Committee concerned, of the Report of the Select Committee set up to consider whether any amendment was desirable in the law relating to the disability of certain ministers of religion from sitting and voting in the Commons.

During the course of the year a long dispute was brought to a close by the judgment of the International Court of Justice that the sovereignty of the Minquiers and Ecrehous islands was vested in Her Majesty. We are happy to be able to publish an article by the Greffier of the States of Jersey which, in addition to a valuable account of the course and substance of the dispute, enlivens the dry

pages of THE TABLE with topographical and ecological descriptions of a beautiful and little-known part of the Commonwealth.

1953 has brought a very heavy crop of privilege cases; in addition to the usual article on Applications of Privilege (to which no less than 7 legislatures have contributed) we have printed as a separate article an account by the Clerk of the Legislative Assembly of Victoria of the proceedings arising out of an allegation of attempts to exercise improper influence on Members (including the Speaker) in their attitude to a question before the House. This matter was referred, somewhat unconventionally, to a Royal Commission; the validity of this procedure was questioned, and the Royal Commission adjourned *sine die* without reporting.

We are, as usual, in debt to the Clerk of the House of Assembly of the Union of South Africa for his annual article on Precedents and Unusual Points of Procedure. Members may be aware that these articles consist mainly of extracts from an annual and partly confidential Report compiled by the Clerk for the benefit of Members of the House of Assembly. We do not know whether any other Member is under the obligation of writing a similar annual Report; if this be so, and the Report can properly be sent to us, we should be very interested to receive it.

The Clerk of the Cape of Good Hope Provincial Council has contributed an article on a disagreement which arose between the Council and the Provincial Administrator regarding the necessity of obtaining the Governor-General's recommendation before inserting in a Bill a provision involving possible expenditure. The Bill, which was passed by the Council with the provision inserted, was ultimately accorded Assent by the Governor-General with the provision omitted.

From India we have received articles on (1) a conference of Presiding Officers and Secretaries of Legislative Bodies in India, which was held in October, 1953, and (2) the creation and inauguration of the new State of Andhra.

Undoubtedly one of the most important political events in the Commonwealth in 1953 was the Federation of the Rhodesias and Nyasaland. We are fortunate in being able to include two articles upon this, one, by the Clerk-Assistant of the Federal Assembly, dealing with the general course of events from January, 1952, to December, 1953, the other, by the Clerk of the Northern Rhodesia Legislative Council, setting forth in detail the consequent constitutional changes in Northern Rhodesia, one of the territories concerned.

Two further articles deal with less happy aspects of the political life of the Commonwealth, namely (1) the "period of trial and error" in the process of constitutional reform in British Guiana, and (2) the Parliamentary and constitutional aspects of the Emergency in Kenya; both are written by the Clerks of the Legislative Councils concerned.

Rulings from the Chair in the House of Commons and Expressions

in Parliament are accorded their usual article, and we have again segregated our miscellaneous items of comment and description into a separate chapter.

Members will (we hope) be pleased to see that the JOURNAL has come out two months earlier this year than last: this happy event is in great part due to the promptitude with which answers to the Questionnaire were sent in. Over the years the Questionnaire will no doubt become even more inquisitorial, but we beg Members, none the less, to continue to return it speedily.

Sir Frederic Metcalfe, K.C.B.—On 28th July, 1954, before the commencement of Public Business, Mr. Speaker read the following letter from Sir Frederic Metcalfe, Clerk of the House of Commons:

I have the honour to inform you that, after thirty-five years in the service of this House, I desire as from the end of this month to resign the patent of Clerk of the House of Commons which it has been my proud privilege to hold for the last six years.

During my twenty-four years at the Table I have seen many events memorable in the history of Parliament and of our country, and owing to the chances of war I have sat at no fewer than five different Tables of the House. I count myself fortunate to have been Clerk of the House at the first sitting in this new Chamber in 1950 when many Speakers and Officials from Parliaments overseas visited Westminster to take part in our ceremonies.

It is with great regret that I leave the service of the House and I wish to express to you, Sir, to all occupants of the Chair and to all Members of the House in this and previous Parliaments, my deep gratitude for the kindness and courtesy which I have always experienced. The friendship and loyalty of all my colleagues has made my work happy, and I am confident that they will continue to serve this honourable House with the devotion that we all feel for our ancient Parliamentary institutions. (531 *Hans.* 516.)

(It may be of interest to Members to note that the "five different Tables of the House" to which Sir Frederic referred were: (1) the Table of the pre-war House; (2) that used in Church House, Westminster, when the Commons sat there during periods of heavy air bombardment in 1940, 1941 and 1944; (3) the Table of the Lords' Chamber, where the Commons sat between 1941 and 1950; (4) that used when the Commons sat in St. Stephen's Hall on the days of the Opening of Parliament, Sessions 1945-46 to 1950, and (5) the Table of the present House.)

On 29th July, the Lord Privy Seal (Mr. H. Crookshank) moved:

That Mr. Speaker be requested to convey to Sir Frederic William Metcalfe, K.C.B., on his retirement from the Office of Clerk of this House, the assurance of its just sense of the exemplary manner in which he has uniformly discharged the duties of his important office, and its appreciation of his thirty-five years of devoted service in different offices of the House, of which twenty-four were spent at the Table, where his experience and ready advice have rendered constant assistance to the House and its Members in the conduct of its business.

Mr. Crookshank said:

With his natural modesty, Sir Frederic himself would have preferred it that we should leave it at that today and make no personal references to him. He

is essentially a modest man. I feel that the House, for the first time in many years, would be unwilling to take Sir Frederic's advice on that matter, even if he tendered it.

The resignation of a Clerk of the House inevitably marks the end of a Parliamentary chapter. Sir Frederic leaves us with the good wishes of everyone. He has served the House for thirty-five years, and at all times he has been a perfect model of patience with all those who sought his guidance. Courtesy was his hall-mark and friendliness his outstanding characteristic, and he joined us in other spheres besides his work. He was a private—there is the modesty again—in our Parliamentary Home Guard during the war. With some he played golf, and in earlier days he shone as a run-getter for the Lords and Commons on the cricket field.

Now he leaves us, his duty done, but young enough for us as a House—with confidence, I hope—to wish him a long and happy retirement. Today we want to thank him for his great services and we shall all miss him from his place at the Table.

Mr. Attlee (Walthamstow, W.), the Leader of the Opposition, having observed that Members were rather apt to take for granted the services of the Officers of the House, said that Sir Frederic had added to the great tradition of his long line of distinguished predecessors. He was, said Mr. Attlee, a personal friend of many in the House, and they all joined in wishing him a long and happy retirement.

Mr. Clement Davies (Montgomery), the Leader of the Liberal Party, thanked Sir Frederic for the kindliness, courtesy and readiness to help which he had shown at all times.

Sir Waldron Smithers (Orpington), speaking as a back bencher, paid him a similar tribute, and expressed a hope that the "Fellowes" that followed him would do equally well.

Mr. Charles Williams (Torquay), on behalf of those who had served in the Chair, said that no one could know how utterly impossible that work would be except for the services of the Clerk. Whatever Sir Frederic's services to private Members had been—and they had been very great indeed—his services to the occupants of the Chair had been quite invaluable and had made their job possible.

Mr. George Benson (Chesterfield) expressed his appreciation on behalf of Labour back benchers. He said:

It is a long time since I first came into this House, and in those days Sir Frederic was Second Clerk Assistant. I can remember the advice which I received as a new Member, completely muddled and befuddled by our procedure and in finding my way about, and the problem I had with Questions. The advice was—and I pass it on to the House in the words in which it was given to me—"Get hold of that red-headed chap. He will help you." That was Sir Frederic. It was very good advice indeed.

The Motion was agreed to, *nemine contradicente*. (531 *Hans.*, cc. 724-6.)

Sir Frederic has been succeeded as Clerk of the House by Mr. E. A. Fellowes, C.B., C.M.G., M.C.

Honours.—On behalf of our Members, we wish to congratulate the

under-mentioned Member of our Society who has been honoured by Her Majesty the Queen since the last issue of the JOURNAL.

K.C.B.—F. W. Lascelles, Esq., C.B., M.C., Clerk of the Parliaments, United Kingdom.

Mr. Owen Clough, C.M.G., LL.D.—We know that all Members will wish to join with us in congratulating our Honorary Life President, upon whom, on 26th June, 1954, was conferred the degree of Doctor of Laws *honoris causa* by the Chancellor of the University of Cape Town (Chief Justice Centlivres). By a happy accident, the Public Orator of the University is Professor Denis Cowen, who is well known to all Members as a firm friend of the Society. The citation which he prepared and read at the ceremony is set forth below:

Mr. Clough is an acknowledged master of Parliamentary procedure—that body of rules which, in the words of a great authority of the eighteenth century, ensures " that the business of the House be not subject to momentary caprice . . . or captious disputes . . . in order that decency should be preserved in a large and sometimes tumultuous Assembly ".

Born in Yorkshire in 1873, Owen Clough was educated in England and Germany, but his life's work has been in South Africa. More than fifty years ago he was appointed to the responsible post of Clerk of the Legislative and Executive Councils of the Transvaal; and he immediately showed his flair for the work by drafting the Standing Rules of the two Houses of the Transvaal Legislature. This was followed by a comprehensive Powers and Privileges of Parliament Act, which was adopted in the Orange River Colony, and later by the Union Parliament.

In 1909 there came from Mr. Clough's pen the first book published in South Africa on Parliamentary Procedure—a volume of 650 pages—and when the Union was formed his expert knowledge was recognised by his appointment as Clerk of the South African Senate—a post in which he served with distinction for some twenty years. It would take too long to chronicle his work during that period, but his survey of Second Chamber government, undertaken for the Speaker's Conference in 1920, deserves a special word. It is still a standard text, and earned for Mr. Clough the honour of the C.M.G.

When Mr. Clough retired from the Senate in 1929 he had achieved much; but not enough to satisfy him. He brought into being the " Society of Clerks-at-the-Table in Empire Parliaments ", and began another long and distinguished period of work as its Honorary Secretary and Treasurer and the Honorary Editor of its Annual Journal.

Mr. Chancellor, the democracies of our Commonwealth have gained a great deal by the adoption of British Parliamentary institutions—but it is well to remember that the adaptation of old forms to new and local needs has not been automatic or mechanical: it has required a discriminating historical sense and wise understanding—for the essence of healthy Parliamentary government does not consist in mere rules and procedures, but in the tolerance and reasonableness of the men who work with them. These qualities and ideals Mr. Clough has enshrined in the pages of the Society's Journal, which is his *magnum opus*; for in the 20 volumes which have appeared since 1932 he contributed over 180 articles. Under his guidance, the Journal has achieved a reputation as an authoritative book of reference, and has helped powerfully to make the institution of Parliamentary government a strong and romantic link of our Commonwealth.

Mr. Clough served in three wars: first in the South African War; then, in

the field, in France and Italy in World War I; and in the Second World War he was a staff officer at Pretoria. And no narrative about him would be complete which did not remind us of his sterling service in connection with S.A.T.S. *General Botha*. He was the first Chairman of the ship's Board of Control, and has been untiring in his efforts to advance the careers of "Botha Boys"—many of whom still speak of "Daddy Clough" with affection.

In honouring Mr. Clough we pay tribute to the best type of gentleman and scholar. He has brought to life in all its aspects a freshness which age cannot quench, a curiosity which time and knowledge have failed to dim, and a courtesy and charm which have endeared him to so many.

It is my privilege, Mr. Chancellor, to request you to confer on Ernest Marshall Owen Clough the degree of Doctor of Laws, *honoris causa*.

Acknowledgments to Contributors.—We have pleasure in acknowledging articles in this Volume from Mr. G. S. C. Tatem, B.A., Clerk of the House of Assembly of Bermuda; Mr. Clinton Hart, Clerk of the Legislature of Jamaica; Mr. E. J. Coode, sometime Clerk of the Legislative Council of Fiji; Mr. H. N. Dollimore, LL.B., Clerk of the House of Representatives and Clerk of the Parliaments, New Zealand; Mr. E. Grant-Dalton, M.A., Clerk-Assistant of the Federal Assembly of Rhodesia and Nyasaland; Mr. E. S. Taylor, Ph.D., Senior Clerk, House of Commons; Mr. R. S. Lankester, Senior Clerk, House of Commons; Mr. F. de L. Bois, M.A., Greffier of the States of Jersey; Mr. H. K. McLachlan, J.P., Clerk of the Legislative Assembly of Victoria; Mr. J. M. Hugo, B.A, LL.B., J.P., Clerk of the House of Assembly, Union of South Africa; Mr. K. W. Schreve, Clerk of the Cape of Good Hope Provincial Council; Shri M. N. Kaul, M.A., Secretary of the Lok Sabha, India; Shri S. L. Shakdher, Joint Secretary, Lok Sabha Secretariat; Mr. K. J. Knaggs, Clerk of the Legislative Council of Northern Rhodesia; Mr. A. I. Crum Ewing, Clerk of the Legislative Council of British Guiana; and Mr. A. W. Purvis, LL.B., Clerk of the Legislative Council of Kenya.

For paragraphs in Article XX ("Applications of Privilege") and Article XXI ("Miscellaneous Notes") we are indebted to: Mr. G. Stephen, M.A., Clerk of the Legislative Assembly of Saskatchewan; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the House of Representatives, Australian Commonwealth; Mr. I. J. Ball, A.A.S.A., A.C.I.S., Clerk of the Legislative Council and Clerk of the Parliaments, South Australia; Mr. F. E. Islip, J.P., Clerk of the Legislative Assembly, Western Australia; Mr. R. St. L. P. Deraniyagala, M.B.E., B.A., Clerk of the House of Representatives, Ceylon; Shri M. N. Kaul, M.A., Secretary of the Lok Sabha, India; Shri S. H. Belavadi, Secretary of the Legislative Department, Bombay; Shri K. C. Bhatnagar, M.A., Secretary of the Legislative Assembly, Uttar Pradesh; Mr. J. R. Franks, B.A., LL.B., Clerk of the Legislative Assembly, Southern Rhodesia; Mr. A. W. Purvis, LL.B., Clerk of the Legislative Council, Kenya; and Mr. T. F. Farrell, Clerk of the Legislative Council, Trinidad and Tobago.

This latter list would have been more than twice as long had not reasons of space (due partly to increased costs) compelled us ruthlessly to exclude much material from Chapter XXI. To those whose careful contributions have suffered excision we can only express our apologies, coupled with the hope that improved finances in future years will render such ruthlessness as unnecessary then as it is now distasteful.

II. HER MAJESTY'S CORONATION

Below are appended accounts of the proceedings in various Commonwealth Legislatures in specific connection with the Coronation of Her Majesty at Westminster Abbey on 2nd June. Incidental references (*e.g.*, in Speeches by Governors-General, etc.) are not recorded.

United Kingdom: House of Lords.—The House of Lords occupies a unique position in regard to Coronations, for the Peers attend the ceremony on the same footing and for the same reasons as they come to Parliament—that is to say, as feudal tenants-in-chief of the Sovereign, to do homage and swear fealty at the Coronation and to give their counsel in Parliament. Until the Coronation of Edward VII, each Peer did homage in person; but on that occasion and afterwards, owing to the large numbers involved, homage has only been done by the senior Peer in each rank. Peers of Scotland and of Ireland, who are not necessarily Lords of Parliament, have, of course, equal standing with Peers of the United Kingdom at Coronations.

The following extracts from a short debate,[1] which arose out of a statement made on the Coronation arrangements by the Lord Chancellor on 27th January, illustrate the development of this ancient tradition at the Coronation of Her present Majesty:

The Lord Chancellor said:

> I do not doubt that it is still, in theory at least, the duty of a Peer to do homage to the Sovereign if he is required to do so, and that an appropriate time and place for it is at the Coronation ceremony: but it does not follow, and is in my opinion an untenable proposition, that a Peer has therefore the right to insist on doing homage on that occasion if he is not required to do so. On the contrary, the Sovereign may release him from this duty, as he may from any other duty or service which is owed him. And it is interesting to note in this very matter of homage that, whereas formerly the Sovereign required each individual Peer to give the kiss of homage and touch the Crown,

from 1902 onwards the duty has been changed, and homage has been rendered only by the premier Noble of each rank on behalf of his peers. Other Peers have urged that, as a Peer has a constitutional right to be summoned to Parliament, so he has the right to be summoned to the Coronation. The answer, I think, is clear: that the former was established as a right many centuries ago: that ample authority for it can be found in our records, and that there is a well-recognised manner of asserting it; in the case of the latter, there is no such precedent nor any method of asserting it. And there is nothing strange in this, for the two so-called rights have so little in common that it would be foolish to argue from one to the other. . . .

When the Peers meet in the Abbey, are they not sitting in Parliament? Parliament can, of course, meet in a church. The answer to that question is that at the Coronation ceremony in Westminster Abbey the Peers are not sitting in Parliament.

The Lord President of the Council (the Marquess of Salisbury) said:

First of all, the Abbey is exactly the same size as it has always been, and, secondly, the number of those who not only wish to attend but ought to attend—especially from the Commonwealth and Empire—has greatly increased since the last Coronation. That is inevitable. . . .

What is it that we are proudest of in our history? It is not that we preserved the feudal system longer than anyone else, but that we were the first people to discard it in favour of Parliamentary government. It is not that we were the last people to uphold the Divine Right of Kings, but that we were the first people to transform it into a Constitutional Monarchy.

What in fact happened was that the Peers and Peeresses occupied their traditional places in the south and north transepts of the Abbey respectively, robed according to custom in their Coronation robes; and put on their coronets—again according to custom—at the moment when the Queen was crowned. In fact, places were found for all those who wished to attend, though at first it had been feared that this would not be possible owing, as has been said before, to the greatly increased attendance from the Commonwealth and Empire. Homage was done to Her Majesty in the ancient form by each of the Royal Dukes and by the following Peers, being the senior in their ranks:

The Duke of Norfolk (Earl Marshal)
The Marquess of Huntly (a Scottish Peer)
The Earl of Shrewsbury
The Viscount Hereford, and
The Lord Mowbray, Segrave and Stourton.

United Kingdom: House of Commons.—On 20th May, the Home Secretary (Sir David Maxwell Fyfe) informed the House of Her Majesty's desire that the House should be represented at her Coronation by Mr. Speaker. This meant that, according to precedent, the House would not go to the Abbey in its corporate capacity, and Mr. Speaker would proceed to the Abbey in state, accompanied by the Serjeant-at-Arms and the Mace.

It was accordingly resolved:

That this House, in accordance with Her Majesty's gracious intimation, doth authorise Mr. Speaker, as representing this House, to attend Her Majesty's Coronation on Tuesday, Second Day of June next.[2]

Canada: Manitoba Legislative Assembly.—On 16th April, the following Motion was moved by the Prime Minister (Hon. D. Campbell):

That it be resolved that an Humble Address in the following words be presented to Her Majesty the Queen on the occasion of Her Majesty's Coronation:

To the Queen's Most Excellent Majesty:
Most Gracious Sovereign:
We, the members of the Legislative Assembly of Manitoba, in Session assembled, repledge our loyalty to the Crown and extend our best wishes for the happiness of Your Reign, on the historic occasion of Your Majesty's Coronation on the Second day of June.

At this time we would, on behalf of all the people of Manitoba, express our deep spirit of loyalty to Your Majesty as throughout the solemn ceremonies of the Coronation there is symbolized the mutual bond of trust and devotion between Your Majesty and your loyal subjects of the Commonwealth.

We have happy memories of the gracious visit of Your Majesty and His Royal Highness the Duke of Edinburgh to this Province. We feel sure it has further enriched the traditions of the lasting relationship between the Crown and our people.

The solemnity of the Coronation will be an occasion marked by the feelings of our Members and our citizens for the deep spiritual and historical significance of the vows that bind us as loyal subjects of Your Majesty. You may be assured of the prayers of all of us for the welfare of Your Majesty and Members of the Royal Family, now, and for the future reign.

With all the people throughout the extended realms of Your Sovereignty, linked by allegiance to your Majesty, we join in the prayer that peace and happiness may, under Divine blessing and guidance, symbolize Your Majesty's reign and that it may be a long and happy one.

And a debate arising,
And Hon. Mr. Campbell, and Messrs. Willis, Stinson, and Hon. Mr. Prefontaine having spoken,
And the question being put on the Motion,
It was unanimously agreed to, the Members standing while the Address was being read by Mr. Speaker.[3]

Australia: New South Wales Legislative Assembly.—On 12th August, the Deputy Premier, Mr. Heffron (by consent) moved, without Notice:

(1) That the following Address of Congratulation to Her Majesty the Queen be adopted:

To Her Most Gracious Majesty Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

May it please Your Majesty,—
We, Your Majesty's loyal and dutiful subjects, the Members of the

Legislative Asssembly of New South Wales, in Parliament assembled, desire to offer our sincere congratulations upon the Coronation of Your Majesty.

We look forward to the forthcoming visit of Your Majesty and, on behalf of the people of this State, assure you of a most cordial welcome.

We assure Your Majesty of our loyalty and attachment to Your Most Gracious Majesty's Throne and Person and express our earnest hope that you may long reign over us in peace and prosperity.

(2) That His Excellency the Governor be requested to forward the above Address to Her Majesty.

The Motion having been seconded by Mr. Howarth,—

Question put and passed.[4]

Australia: Tasmanian Legislative Council.—On 29th September, the Deputy-President announced:

I have the honour to inform the Council that, Parliament not being in Session, the Honourable the President, in conjunction with the Honourable the Speaker of the House of Assembly, forwarded through His Excellency the Governor, on behalf of the Parliament of Tasmania, the following Joint Address to Her Majesty the Queen, on the occasion of Her Majesty's Coronation:

To her most Gracious Majesty the Queen:

Most Gracious Sovereign,

On behalf of the Members of the Parliament of Tasmania, we, the President of the Legislative Council and the Speaker of the House of Assembly, desire to approach Your Most Gracious Majesty with an expression of our devoted loyalty and attachment to Your Majesty's Throne and Person.

On the auspicious occasion of the Coronation of Your Majesty, we humbly beg to express an earnest hope that your reign may be a long and prosperous one, and fraught with happiness to Your Majesty and to all your subjects throughout the British Commonwealth.

We look forward with the keenest anticipation to the visit of Your Majesty and His Royal Highness the Duke of Edinburgh in February next, when a loyal and warm welcome awaits you.

R. O. Shoobridge,
President of the Legislative Council.
L. T. Spurr,
Speaker of the House of Assembly.

Parliament House, Hobart, Tasmania,
25th day of June, 1953,

of which Her Majesty has been pleased to make the following acknowledgment:

Government House,
Hobart, Tasmania,
17th August, 1953.

Sir,

I have the honour to inform you that I have it in command from Her Majesty the Queen to request you to convey to the Members of the Legislative Council Her Majesty's sincere thanks for their Address of loyalty and good wishes on the occasion of Her Majesty's Coronation.

I have the honour to be, Sir,
Your obedient servant,
Ronald Cross, Governor.[5]

Union of South Africa: Senate and House of Assembly.—On 24th

February, in the House of Assembly, the Prime Minister moved, as an unopposed Motion, seconded by Mr. Strauss:

That the following Address be presented to Her Majesty the Queen:

May it please Your Majesty:

We, the Members of the House of Assembly of the Union of South Africa, desire to convey to Your Majesty and to His Royal Highness the Duke of Edinburgh our most sincere congratulations on the occasion of Your Majesty's Coronation.

It is the earnest hope and prayer of Your Majesty's subjects in the Union of South Africa that, with the blessing of Almighty God, Your Majesty may be long spared to reign over a contented and united people.

And we humbly assure Your Majesty of our continued devotion and loyalty to Your Majesty's Throne and Person.

Agreed to.

The Prime Minister then moved, seconded by Mr. Strauss:

That the above resolution be transmitted by Message to the Honourable the Senate in order that the Address of the House of Assembly may be adopted as a Joint Address from both Houses of Parliament.

Agreed to.

Mr. Speaker read a Message transmitting the resolution accordingly.

Message approved of and ordered to be conveyed to the Senate by the Clerk of the House.[6]

The Resolution was agreed to by the Senate on the same day.[7]

An illuminated Joint Address from both Houses of Parliament was subsequently forwarded by Mr. President and Mr. Speaker to His Excellency the Governor-General for transmission to Her Majesty the Queen.

British Guiana Legislative Council.—On 2nd April, the following Address was agreed to by the Council:

Most Gracious and Sovereign Lady,

On behalf of the inhabitants of this Colony, we, the Legislative Council of British Guiana now in session, beg leave to tender this Address, to be laid before Your Majesty on the occasion of Your Coronation, in expression of our humble duty and our abiding loyalty to the Throne.

The diverse races who dwell in this Colony are united in their devotion to Your Majesty and on the day of Your Coronation we shall join with Your loyal subjects throughout the world in earnest prayer for Your Majesty as You dedicate Yourself anew to the service of us all.

The recent visit to British Guiana of Her Royal Highness the Princess Royal was the occasion of spontaneous and widespread demonstrations of loyalty and affection by our people who gladly welcomed this opportunity of showing their attachment to Your Royal House.

During nearly a century and a half we have learnt to value the ties and traditions which bind us to the Mother Country and we are conscious of the benefits of security, justice and liberty which we owe to that connection. We are about to undertake a measure of more responsible Government entrusted to us by Your Majesty in Council under a new Constitution. We are confident that our successors in this Legislature will exercise these wider powers with wisdom and discretion and in continued loyalty to Your Majesty.

We pray that Almighty God may give Your Majesty guidance and strength to carry the burden that rests upon You and that the British Commonwealth

of which Your Majesty is the gracious Head may lead the nations of the world along the path of peace and progress.

May God's blessing rest upon Your Majesty and Your Consort, His Royal Highness the Duke of Edinburgh, and all the Royal Family.[8]

The Loyal Address was illuminated and dispatched to Her Majesty in a casket made of eight species of Colony woods.

Kenya Legislative Council.—On 8th May, the Chief Secretary (Hon. H. S. Potter) moved:

That it be resolved that the following Address be presented to Her Majesty the Queen, and that you, Mr. Speaker, do deliver the Address to His Excellency the Governor with the request that he will arrange for its presentation to Her Majesty:

The Legislative Council of the Colony and Protectorate of Kenya in Session at Nairobi this eighth day of May, 1953.

To Her Most Excellent Majesty Queen Elizabeth the Second,

May it please Your Majesty,

We, the Members of the Legislative Council of the Colony and Protectorate of Kenya, on the occasion of Your Majesty's Coronation, tender our loyal and humble duty to Your Majesty's Person and Throne, and reverently pray that Your Majesty may enjoy a long and prosperous and peaceful reign under the blessing of Divine Providence.

Mr. Blundell (Rift Valley), speaking on behalf of the Unofficial Members, associated himself with the Motion.[9]

On 21st July, after Prayers, Mr. Speaker said:

Hon. Members, in accordance with the Motion moved in this Council some time ago for a Loyal Address to be presented to Her Majesty the Queen on the occasion of her Coronation, the Address was duly prepared and engrossed on vellum with the aid of the Government Printer to whom our thanks are due and on a day on which His Excellency the Governor had arranged for Loyal Addresses to be taken to Government House, in company with the Deputation of Members—Sir Charles Mortimer, Mr. Havelock, Mr. A. B. Patel and Mr. Mathu—I duly attended and read and presented that Address. I have now received from His Excellency the Governor a telegram which he had received on the 11th July from the Rt. Hon. the Secretary of State for the Colonies, which is as follows:

> The Loyal Address from Legislative Council, forwarded under cover of your Saving 817, has been laid before the Queen who has commanded me to inform you that she has been deeply moved by this expression of loyalty and devotion and to request you to convey to the President an expression of Her sincere thanks. (Applause.)[10]

Mauritius Legislative Council.—On 5th June the following motion was moved by Dr. Ramgoolam:

This Council and the people of Mauritius are happy to be associated with the rejoicings of the Parliaments and people of the Commonwealth and Empire on the occasion of the Coronation of Her Majesty Queen Elizabeth II.

This Council offers its respectful homage to our Gracious Queen, who by Her youth and charm has won the hearts of all the people of this Colony.

This Council prays that by the blessings of Divine Providence the reign of our Queen may be long and glorious, and that She may find strength and support in the love and affection of all of Her subjects on the occasion of the

ander Hood, G.B.E., K.C.B.), who escorted her to the entrance. Her Majesty was met there by Black Rod (Police Commissioner R. G. Henderson), who led the procession to the Bar of the House, where the President of the Legislative Council (Hon. J. T. Gilbert, C.B.E., Q.C.), robed in scarlet, and the Speaker of the House of Assembly (Hon. Sir John Cox, C.B.E.), robed in black, met the Royal Party, and preceded them, Black Rod leading, to the Clerk's table, where they stood aside to allow the Royal Party to take their places on the Speaker's dais. Black Rod placed the Sword of State upon the Clerk's table (the Mace having been placed on the Speaker's desk and covered with a red cloth before Her Majesty's arrival). The Lord Bishop of Bermuda (Right Rev. J. A. Jagoe) intoned prayers for the Queen's Majesty, the Royal Family, the Government and Parliament of Bermuda.

At the conclusion of prayers, Her Majesty the Queen took her seat on the Throne. H.R.H. the Duke of Edinburgh and His Excellency the Governor took their seats in the places prepared for them. The Members of the Legislature and the assembled company remained standing.

The Speaker of the House of Assembly, accompanied by the President of the Legislative Council, moved to the front of the Clerk's table, where Mr. Speaker presented the following Address, which had previously been prepared jointly by the Speaker and Mr. President, and agreed to informally by Members of both Houses.

Most Gracious Sovereign Lady,

We, Your Majesty's most dutiful and loyal subjects, the Legislative Council and the General Assembly of the Bermudas or Somers Islands, present our humble duty to Your Majesty and beg leave on behalf of the people of these Islands to express to Your Majesty loyal and affectionate greetings and to welcome Your Majesty and Your Majesty's Royal and gallant Consort, His Royal Highness the Duke of Edinburgh.

Today will always be memorable in our history. In the past we have been privileged from time to time to have among us members of Your Majesty's Family, including Your Majesty's Royal father and Your Majesty's Royal grandfather, each while he was serving in the Royal Navy, but Your Majesty is the first Reigning Sovereign to set foot in this Colony. We are indeed grateful to Your Majesty for including a visit to these Islands in the course of Your Majesty's journey to the great Commonwealth countries across the world.

We are proud to be the oldest of all Your Majesty's Colonies. We are proud also that in the whole of the Commonwealth and Empire we are second only to the Mother Country in the age of our Parliament. Your Majesty's gracious presence in this Chamber, where today both Houses are assembled, gives us the deepest joy and satisfaction.

In common with the millions of Your Majesty's subjects throughout the Commonwealth and Empire, and millions more among the nations of the earth, we were deeply moved by the great event of Your Majesty's crowning, when, in a setting of unparalleled splendour, Your Majesty solemnly dedicated yourself to the service of your peoples.

The founding of this ancient Colony can be directly ascribed to the indomitable spirit of adventure which was inspired and fostered by that great Queen

of England whose name Your Majesty bears. May Your Majesty's noble example inspire us to carry out faithfully our own part, small as it may be, in the shaping of our Commonwealth and Empire.

We wish Your Majesty and His Royal Highness a safe and pleasant voyage, a happy fulfilment of Your Majesty's present undertakings and in due time a happy reunion with Their Royal Highnesses Your Majesty's children, who have already gained their rightful place in our affection. We fervently pray that Your Majesty may long reign over us in health and wealth and in happiness.

At the conclusion of the Address Mr. Speaker placed the scroll in a cylinder of old Bermuda cedar, made by his own hands, and with the President of the Council presented it to Her Majesty.

Her Majesty then stood and read the following reply:

Mr. President and Honourable Gentlemen of the Legislative Council,
Mr. Speaker and Members of the Honourable House of Assembly,

I thank you for the warm words of welcome and sentiments of loyalty which you have expressed.

Perhaps the most valuable contribution which has been made by the British people to the progress of the human race has been their sense of respect and tolerance for the rights of the private individual. From this sense spring those Parliamentary institutions of which we are justly proud. The first seed of the plant which grew in Britain fell here in Bermuda and the climate and soil seem to have suited it. I am happy today to be able to visit this, the first of my Parliaments overseas, and to find so fine and vigorous a growth.

Nor is it British Parliamentary institutions alone which have grown and flourished in Bermuda; for our British outlook and customs have taken firm root and in the Old Country they may be proud of this plant which has sprung from British seed.

I am sensible that the loyalty which you have expressed to me in words has in the past found expression in deeds. This Colony has played a long part in the struggles which have built up the British Commonwealth overseas, and in recent years in two World Wars Bermudians have proudly stepped into the position they inherit as the oldest unit of the British Commonwealth and have fought side by side with their fellows for its preservation. From these years of strife wider organisations to ensure world peace are emerging, in which I am confident that Bermuda will play an honourable part while retaining to the full the distinguished position she occupies in the British Commonwealth. That position will, I know, remain unshaken by the storms through which the world is passing.

My husband and I have been deeply touched by the welcome we have received here. Bermuda holds and always will hold a warm place in our hearts. May God bless you all.

At the conclusion of Her Majesty's reply, Black Rod crossed to the front of the Royal dais, lifted up the Sword of State and carried it from the Chamber, pausing for a moment at the Bar. The procession re-formed behind him and left the Chamber. Mr. Speaker and Mr. President, having accompanied Her Majesty to the Royal landau, returned to the Chamber, which they left immediately afterwards, preceded by the Mace.

Jamaica

By Clinton Hart, Clerk of the Legislature of Jamaica

On Thursday, 26th November, the Legislative Council and the House of Representatives met in joint session at Headquarters House in Kingston, at 11.20 a.m. Also present at the meeting were representatives of other British West Indian Territories, *viz.*, Antigua, Barbados, British Honduras, British Virgin Islands, Dominica, Grenada, Montserrat, St. Kitts, Nevis and Anguilla, St. Lucia, St. Vincent, Trinidad, the Bahamas and British Guiana.

The Clerk announced the approach of Her Majesty the Queen and His Royal Highness the Duke of Edinburgh. The President and Speaker left the Chamber and met the Royal Visitors.

At 11.35 o'clock a.m. Her Majesty Queen Elizabeth II and His Royal Highness the Duke of Edinburgh entered the Chamber. The President entered the Chamber with the Queen, and the Speaker followed immediately with the Duke of Edinburgh.

The Queen took her seat on the dais and the Duke on a raised platform slightly lower, and to her right. The President and Speaker were seated to the left of Her Majesty. Her Majesty gave permission for the Houses to be seated as soon as she reached the dais and turned towards the Members of both Houses. The Members of both Houses were arranged in a horse-shoe around her, with the Legislative Council on her right, and the House of Representatives on her left. The Clerk and Deputy Clerk of the Legislature were seated in the apex of the horse-shoe and just outside, the former on the side of the Legislative Council and the latter on the side of the House of Representatives. The two Maces were placed upright on either side of the dais on which Her Majesty was seated.

The President asked leave of Her Majesty for the Speaker to read an Address from both Houses. Leave having been granted, the Speaker read the Address as follows:

Most Gracious Majesty,

On behalf of Your Majesty's loyal subjects of Jamaica and its Dependencies, this Legislature extends to Your Majesty and His Royal Highness the Duke of Edinburgh a loving and sincere welcome.

Ours is a twofold rejoicing. We rejoice that for the first time in our history our Reigning Sovereign has graciously honoured us by coming to our shores. We also rejoice that Your Majesty is visiting us in this glorious Coronation Year.

We are overjoyed at our good fortune, and shall ever treasure the memory of this doubly historic occasion. We are happy to remember the honour done to the Island when Your Majesty's grandfather, as a young naval officer, came to Jamaica sixty-two years ago. We are happy, too, to recall the joyful reception given to Your Majesty's beloved father and mother when they graciously visited our Island in 1927. In our recollection of those visits and our rejoicing today we reflect with the utmost gratitude upon the deep concern of our Royal Family for the welfare of their loyal subjects from generation to generation, and we reflect, too, on the abiding traditions which we have the

proud privilege to share with Your Majesty's subjects in all parts of the world.

It is now nearly three hundred years since Jamaica first became a member of the great Commonwealth family of countries and peoples, and in 1955 we shall celebrate the three hundredth anniversary of Jamaica's birth as a member of that family. In these three centuries the people of Jamaica have learnt to value the peculiar traditions and privileges of the British Commonwealth, the traditions and privileges of impartial justice and personal freedom and representative Government.

We are determined to protect and preserve them.

We express our gratitude for the important reforms in our Constitution granted by Your Majesty in Your Majesty's Privy Council this year. These reforms represent a vital advance in the creation of a system of representative responsible government, and the advance is firmly based on the well-established principles which the Mother of Parliaments has taught the world. It is our determination to proceed with vigour and confidence along this road and we are resolved so to exercise the powers and responsibilities granted to us to justify our further advance towards self-government.

We have watched with profound respect and devotion the high example of personal service which Your Majesty has at all times set and maintained. These feelings were in all our hearts during the beautiful and exacting Coronation ceremony which moved the Commonwealth and the nations of the world to a keen admiration for our Sovereign and a full appreciation of the part which the Commonwealth of which Your Majesty is the Beloved Head can play in the peace and progress of the world.

We pray that Your Majesty and all members of the family over whom Your Majesty presides with the simple dignity of Christian Motherhood may long be spared to strengthen the ties of affection and devotion which bind us to Your Majesty's throne and person.

We devoutly wish for Your Majesty and His Royal Highness a happy continuation of your Royal progress round the world and a safe return to your home and family at the centre of Your Majesty's great Commonwealth and Empire.

A. G. Curphey,
President of the Legislative Council.

C. C. Campbell,
Speaker of the House of Representatives.

The Speaker presented the Address to Her Majesty. Her Majesty then graciously made the following reply:

Mr. President and Honourable Members of the Legislative Council,
Mr. Speaker and Members of the Honourable House of Representatives,

I thank you for the Address which you have read to me and I am very grateful to you and to all the people of Jamaica for the wonderful welcome given to me and to my husband on this our first visit to the West Indies.

May I also say how grateful I am to the representatives of the other territories who have joined in this welcome? I was very glad when I heard that the Jamaica Legislature had invited representatives of the Legislatures of the other territories to come here and I greatly appreciated the joint Address which was presented to me on my arrival at Montego Bay yesterday.

I believe that, in spite of the distances which separate you and the diversity of your countries, there exists in all my territories in this region a devotion to the traditions which we all hold dear. In the wider sphere of world affairs the British Commonwealth and Empire have shown to the world that the strongest bonds of all are those which are recorded not in documents but in the

hearts of peoples who share the same beliefs and the same aims. Here in this region you are showing that you are bound together in the same way by common economic interests and common political purposes. Those ties are powerful but they are not so strong as the bonds of human friendship and the unity which comes from sharing the same heritage and the same aspirations and the same loyalty.

It is a great pleasure to make this first visit to the West Indies and to see something of the natural beauty of your lovely Jamaican countryside. What I have seen has more than fulfilled my expectations. But I have learned too of your problems and I know of the efforts which you are making to overcome them.

I am glad that the Mother Country is helping in that cause—helping to bring greater prosperity and helping to provide more and better education and health services.

I am especially glad to see that Jamaica has made such a rapid recovery from the hurricane of two years ago. For when that disaster occurred help came, not only from my Government in the United Kingdom, but from thousands of my people throughout the Commonwealth.

I shall watch with the keenest interest your progress under the constitutional changes which I made in my Privy Council at Windsor Castle in April this year. You have the great advantage of a long Parliamentary tradition. That tradition goes back nearly three centuries to the time when the first Jamaican constitution was granted by King Charles the Second. Indeed, it is longer than that. For it is a tradition which comes down to you from the earliest days of our Parliament at Westminster.

May God give you strength and wisdom to build well for the future as Jamaica and the British West Indies advance in a new era to tackle their many problems, and overcome their many difficulties, and develop to the full all their human and natural resources, and give new leadership and new hope to the peoples of my Caribbean territories. May you build on the principles of Parliamentary government which have been tested and tried over the centuries and found to be sure and true, and may your efforts to serve those whom you represent be crowned with success.

To you and to all the people of Jamaica and to all the peoples of my Caribbean territories I bring my most sincere good wishes for continued progress and increased prosperity.

ELIZABETH R.

At the conclusion of her Reply, Her Majesty and His Royal Highness the Duke of Edinburgh signed the Distinguished Visitors' Book, and the President, having asked leave to conduct Her Majesty from the Chamber, Her Majesty and His Royal Highness took their departure.

FIJI

By E. J. Coode (at that time Clerk of the Legislative Council)

The Royal Visit to Fiji (17th to 19th December) included a half-hour visit by Her Majesty and H.R.H. the Duke of Edinburgh to the Legislative Council Chamber, from 9.30 to 10 a.m. on 18th December.

Although the occasion was not a session of the Legislative Council it was, by using the Council Chamber, the venue of the official welcome to the Colony to Her Majesty. On the first day of her visit

the welcome had been performed entirely in accordance with Fijian custom, by the Fijian population. In the evening, His Excellency the Governor held a State dinner party at Government House, before which Members of Executive and Legislative Councils and the Clerk of Councils, with their wives, were accorded the honour of being presented to Her Majesty the Queen and His Royal Highness the Duke of Edinburgh.

The ceremony in the Legislative Council Chamber was attended, on invitation, by all Members of Executive and Legislative Councils (the former body numbers nine and the latter thirty-one, but nearly all the Members of the Executive Council are also Members of the Legislative Council) with their wives, by the Chief Justice, the Heads of the Armed Services, a small group of distinguished citizens, and the two guests of each person receiving a decoration. The size of the function was limited to the 160 seats which could be provided in the Chamber after the official benches and tables had been removed. All that was left was the raised dais, but the table in front of it was removed; Her Majesty the Queen, H.R.H. the Duke of Edinburgh, the Private Secretary, Lady in Waiting and Equerry, together with H.E. the Governor (Sir Ronald Garvey, K.C.M.G., K.C.V.O., M.B.E.) and Lady Garvey, sat on the dais facing those invited to the ceremony.

When Her Majesty was seated, the Clerk of the Council announced the reading of a loyal Address (compiled by a group of the leading Unofficial Members of the Council in consultation with the Governor and the Acting Colonial Secretary). This Address was accordingly read by Ratu Sir Lala Sukuna, K.C.M.G., K.B.E. (Secretary for Fijian Affairs), who was supported by Mr. H. M. Scott, D.F.C. (Senior European Elected Member of the Legislative Council), and Mr. Vishnu Deo (Senior Indian Elected Member).

May it please Your Majesty,

With affection and with our humble loyalty and duty to the Throne and Person of Your Majesty, we, the people of Fiji, today welcome Your Majesty and His Royal Highness the Duke of Edinburgh to this Colony.

We are overjoyed that Your Majesty has been graciously pleased to spare the time to visit these small and remote islands during a long and strenuous tour of the Commonwealth. We have been honoured in the past by visits of members of the Royal Family who have later ascended the Throne, and there are many of us here today who remember with particular affection the visit of His late Majesty King George the Sixth and Her Majesty the Queen Mother when, as Duke and Duchess of York, they called at Suva in 1927. But never before have we had the privilege and pleasure of receiving the reigning Monarch in our midst. Your Majesty's visit to us today is the most splendid event in the seventy-nine years of our history as a Colony.

On October 10th, 1874, Ratu Cakobau and the other leading Fijian Chiefs, relying on the justice and generosity of Her Majesty Queen Victoria, ceded the dominion and sovereignty over the whole of these islands and their inhabitants to the British Crown. That trust has not been misplaced and has never been shaken with the passage of time, in peace or war, prosperity or adversity.

Under the protection of the British Crown, Fiji has enjoyed freedom and security, law and order, justice and generosity. The Fijian people, no less than those of other races who have since made their home here, have good reason to be grateful for the faith and foresight of those Fijian Chiefs over three-quarters of a century ago. It is our belief that Your Majesty will rule us wisely and kindly in the years to come; and we pray that Your Majesty, so recently and so gloriously crowned, may be blessed with a long and illustrious reign.

Apart from the great pleasure which Your Majesty's visit gives to us all today, it will still further strengthen the bonds of affection and loyalty which bind us to the Throne and Person of Your Majesty. Composed as we are of several racial communities with different origins, languages, customs and traditions, we are nevertheless as one in our loyalty and devotion to Your Majesty. Though the distance which separates us from the Mother Country is great, and our islands, our population and our resources small, we humbly believe that our allegiance and our record of service to Your Majesty and Your Majesty's illustrious predecessors equal those of any of Your Majesty's subjects in this great Commonwealth.

We are deeply grateful to Your Majesty for visiting us today and we wish Your Majesty and His Royal Highness the Duke of Edinburgh a happy and enjoyable tour of the Commonwealth and a safe return to Your Majesty's Family and People in the United Kingdom.

Her Majesty then replied in the following terms:

I thank you for the kind terms of your Address of Welcome. I have been greatly touched by the impressive demonstration of loyalty and affection shown to myself and my husband since we arrived in the City of Suva yesterday morning. It has been a moving experience for us to meet such enthusiastic and warm-hearted hospitality in this distant corner of my Realms.

I am very glad that it has been possible to pay this visit to Fiji during my Tour of the Commonwealth, and my only regret is that our visit has to be so short. I wish that we could have found time to see some of the other islands, but unfortunately we must continue our journey tomorrow. We count ourselves fortunate, however, during our brief stay to have been able to see so much of this beautiful Colony and to meet so many of its people.

I gratefully acknowledge the steadfast loyalty of the people of Fiji to the British Crown, a loyalty which has stood the test of time and trial in two great World Wars, and which is still being proved by service in another part of the Commonwealth. I send a special word of greeting to the men of the 1st Battalion Fiji Infantry Regiment in Malaya; and I should like them to know that, though they are far away from home today, they are not forgotten.

It gives me great pleasure to learn of the way in which the different racial communities in Fiji have succeeded in living and working together in harmony. This has given the Colony prosperity and a political stability that might well be envied by many larger territories. It is an achievement which reflects great credit on your system of Government. It is also a tribute to your common sense and spirit of toleration. I know that many difficult problems lie ahead, but I am sure that if you approach them as a united people, with the interests of the whole Colony at heart, they will eventually be overcome.

I shall follow the future progress of the Colony with keen interest; and shall always pray for the happiness and prosperity of all its inhabitants.

These proceedings occupied about ten minutes, and there followed an Investiture by Her Majesty the Queen, at which eighteen persons received decorations. The Clerk to the Legislative Council announced the name of each person to be decorated. This continued until 9.55, when Her Majesty the Queen left.

The Investiture was held in the Legislative Council Chamber in accordance with a practice of many years' standing; the Governor, who is President of the Legislative Council, usually takes the opportunity of the ceremonial opening of the first day of the Budget Session in November to present honours awarded to persons in the Colony. This is done in the Legislative Council Chamber while the Members are officially present for the opening of the Session, although it is not part of the business of the Council or in any way mentioned in Standing Orders. 1953 being the year of the Royal Visit to Fiji, it was especially appropriate to request Her Majesty to confer the honours in person.

New Zealand

By H. N. Dollimore, LL.B., Clerk of the House of Representatives and Clerk of the Parliaments

It is with a feeling of real satisfaction that I speak to you, the elected representatives of the people of New Zealand, as your Queen, and that I exercise my prerogative of opening the Fourth Session of this Thirtieth Parliament.

These words, with which Her Majesty Queen Elizabeth the Second began her Speech from the Throne, when she opened a special two-day session of Parliament, gave reality to her Royal Style and Title as Queen of New Zealand.

The ceremony took place in the Chamber of the defunct Legislative Council. Her Majesty, wearing the magnificent Coronation gown, the Blue Ribbon and Order of the Garter, a diamond tiara necklace and pendant earrings, read the Speech while seated on a red and gilded Throne which was situated on a honey-gold carpeted and canopied dais made of timber from the native Puriri tree. His Royal Highness the Duke of Edinburgh, in the uniform of Admiral of the Fleet, was seated at Her Majesty's left. When Her Majesty and His Royal Highness entered the Chamber and stood on the dais and faced the assembly before taking their seats, the scene, emphasised by the dignified and brilliantly lighted rimu-panelled surroundings, was breath-taking in its beauty.

The occasion was of the greatest historical and constitutional importance. New Zealand became the first nation of the Commonwealth, outside the United Kingdom, to be so recognised by the Queen in person in the opening of its Parliament. It was also the first time in New Zealand's 114 years of constitutional history that the reigning Sovereign had visited this most distant part of her Commonwealth and Empire; a country whose people have often been proclaimed as even more British than the people of Britain, and whose loyalty has never been questioned. History indeed was made in the Council Chamber at Parliament House, Wellington, on the afternoon of Tuesday, 12th January, 1954, though many privileged to be present may perhaps not have appreciated the con-

stitutional importance of the ceremony. None, however, will ever forget the sheer brilliance of the scene.

The day after her arrival at Auckland on 23rd December, Her Majesty performed her first constitutional function by issuing the following Royal Proclamation[1] summoning the New Zealand General Assembly for the despatch of business:

BY THE QUEEN

A PROCLAMATION

ELIZABETH R.

Whereas the General Assembly of New Zealand stands prorogued to the 7th day of January 1954: And whereas for certain causes and considerations We have thought fit to prorogue it further: Now THEREFORE We hereby issue this Our Royal Proclamation and declare Our Royal Will and Pleasure that the said General Assembly shall be holden in the Parliament House in the City of Wellington, at 2.30 p.m. on Tuesday, the 12th day of January 1954, there to take into consideration the state and welfare of New Zealand and therein to do as may seem necessary: And the Members of Parliament elected to serve in the House of Representatives are hereby required and commanded to give their attendance accordingly on the said Tuesday, the 12th day of January 1954.

Given at Our Court at Government House, Auckland, and issued under the Seal of New Zealand, this 24th day of December 1953, in the second year of Our Reign.

S. G. HOLLAND, Prime Minister.

GOD SAVE THE QUEEN

On 14th January, 1954, a further Royal Proclamation[2] proroguing the New Zealand General Assembly was issued in the following terms:

BY THE QUEEN

A PROCLAMATION

ELIZABETH R.

We hereby issue this Our Royal Proclamation and declare Our Royal Will and Pleasure that the General Assembly of New Zealand be prorogued until Thursday, the 25th day of March 1954.

Given at Our Court at Government House, Wellington, and issued under the Seal of New Zealand, this 14th day of January 1954, in the second year of Our Reign.

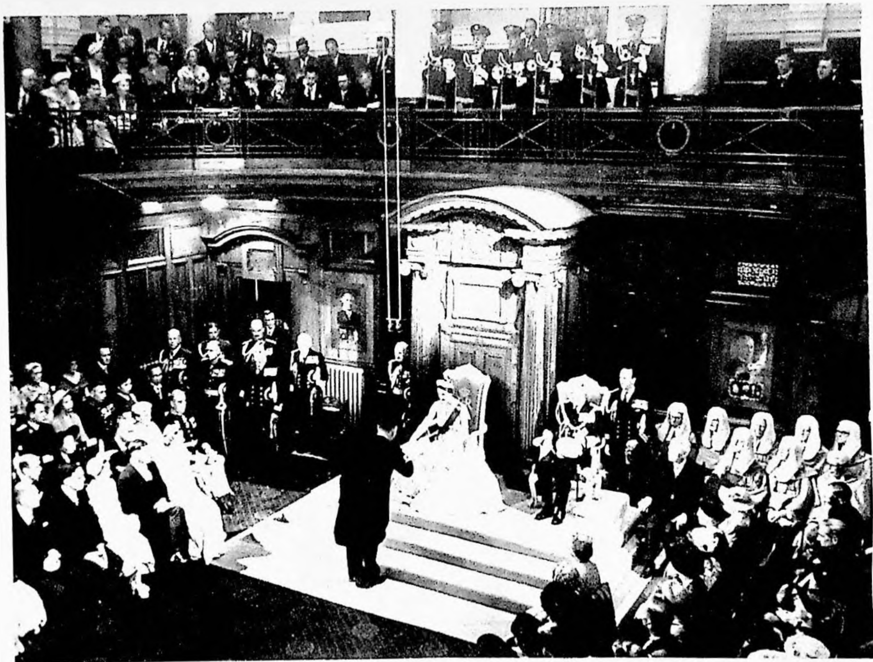
S. G. HOLLAND, Prime Minister.

GOD SAVE THE QUEEN

To remove doubts as to the competency of Her Majesty, while present in New Zealand, to exercise certain Royal Powers normally exercised by the Governor-General, the House, in September, had passed the Royal Powers Bill.[3] Sec. 2 provides:

(1) It is hereby declared that every power conferred on the Governor-General by any enactment is a royal power which is exercisable by him on behalf of Her Majesty the Queen, and may accordingly be exercised either by Her Majesty in person or by the Governor-General.

(2) It is hereby further declared that every reference in any Act to the

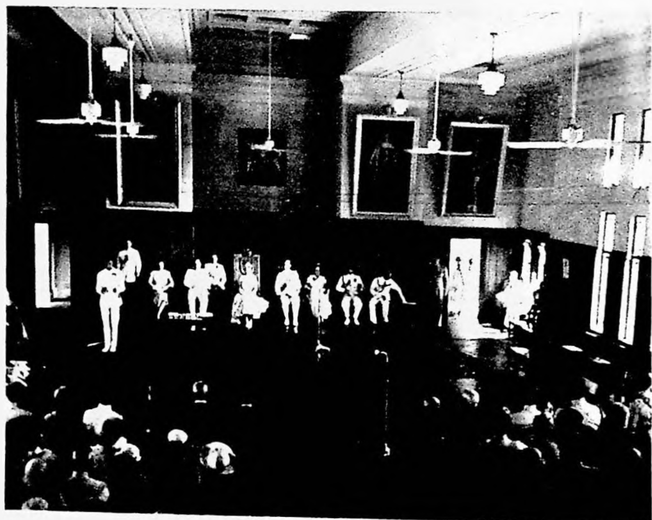


NEW ZEALAND

Her Majesty opens Parliament. The Prime Minister presents the Speech from the Throne.

BERMUDA

Her Majesty and H.R.H. the Duke of Edinburgh leave the House of Assembly, preceded by the President of the Legislative Council and Speaker of the House of Assembly, followed by H.E. the Governor.



FIJI

The Clerk of the Legislative Council announces the reading of a Loyal Address to Her Majesty.

Governor-General in Council or any other like expression includes a reference to Her Majesty the Queen acting by and with the advice and consent of the Executive Council of New Zealand.

So much for the constitutional aspect of the Queen's visit.

Events in connection with New Zealand's Parliament and in which Her Majesty was the central figure aroused the keenest interest, not only in the capital city, but throughout the country, and merit description.

Monday, 11th January, 1954—State Luncheon

At 12.25 p.m. Her Majesty, accompanied by His Royal Highness the Duke of Edinburgh, arrived at the base of the main steps of Parliament House, where a Guard of Honour, formed by the Wellington Regiment (City of Wellington's Own) was mounted. On the steps were the wives of Members of Parliament, Parliamentary and Ministerial officials and their wives, and distinguished members of the public. The spacious grounds were densely packed with thousands of cheering citizens. Following the Royal Salute and the playing of the National Anthem, Her Majesty inspected the Guard of Honour, then, accompanied by His Royal Highness and escorted by the Prime Minister (Rt. Hon. S. G. Holland), she moved up the carpeted steps and through the main vestibule to the Social Hall, where 270 guests, representing every section of the community, including Members of Parliament and the Clerk of the House of Representatives, were assembled. As Her Majesty entered Parliament House the Royal Standard was broken on the central flagpole.

The Prime Minister proposed, and the Leader of the Opposition (Rt. Hon. W. Nash) supported, the toasts to the Queen and the Duke of Edinburgh. Her Majesty, on replying, was given a tremendous ovation. The Prime Minister then asked the Queen and the Duke of Edinburgh to accept a silver tea-set, "made by loyal New Zealand craftsmen from silver mined in New Zealand, and encased in a polished box case of totara knot with kauri inlays, the work of disabled servicemen". Her Majesty also graciously accepted a gold medal, a replica of the medal issued to every school child in New Zealand in commemoration of the Royal Visit.

Tuesday, 12th January, 1954—Royal Opening of Parliament

A vast crowd of people had assembled in Parliament House grounds from an early hour. The main steps of Parliament House, down the centre of which a red carpet (with golden *fleur-de-lis*) had been laid, was lined on either side with official guests, who were all in position before 1 p.m. Members of the Diplomatic Corps and their wives arrived between 1.30 p.m. and 1.45 p.m.; Church dignitaries at 2 p.m.; the Mayor of Wellington (preceded by his Mace

Bearer and accompanied by his aides and the Town Clerk) at 2.5 p.m. Judges, followed by Queen's Counsel, arrived at 2.10 p.m.

All these distinguished guests were received at the base of the steps by the Serjeant-at-Arms, and at the top of the steps by the Clerk-Assistant of the House of Representatives, and escorted through the Members' Lounge (on either side of which tiered seating had been provided for some 450 guests of Members) to seats on the floor of the Council Chamber.

Her Excellency Lady Norrie, accompanied by Miss Rosemary Norrie and personal staff, made an unobtrusive entry to Parliament House. She was received by the Clerk of the House and at 2.15 p.m. escorted from his office through the Members' Lounge to a front row position to the left of the dais in the Council Chamber.

At 2.10 p.m. a Guard of Honour formed by the Wellington Regiment (City of Wellington's Own) and the band of the Regiment, together with the pipes and drums, was mounted opposite the main steps, and trumpeters of the Royal New Zealand Air Force took up positions on the balcony overlooking the steps.

At 2.22 p.m. Black Rod, in full evening dress and carrying his staff of office, moved to the base of the main steps to await the arrival of Her Majesty. The Chiefs of Staff and members of Her Majesty's Honorary Staff took up their positions in échelon on the left and right of the central carpet and several steps up from the middle landing.

Her Majesty and His Royal Highness the Duke of Edinburgh, who had driven in State from Government House amidst tremendous public acclaim, arrived at the base of the steps at 2.28 p.m., where they were received by Black Rod. Bowing to Her Majesty, and to the accompaniment of a fanfare of trumpets, he led the Royal procession up the steps to the middle landing. There Her Majesty turned about and took the Royal Salute; the National Anthem was played, a salute of 21 guns was fired from Point Jerningham, and a formation of R.N.Z.A.F. jet aircraft roared overhead. Her Majesty made a glorious picture as the bright sun shone on her diamond tiara and glittering Coronation gown. His Royal Highness wore the uniform of Admiral of the Fleet.

Amidst tremendous cheering, Her Majesty and His Royal Highness, preceded by Black Rod and followed by their personal staff, then moved up the steps and proceeded through the main vestibule and Members' Lounge to the dais in the Council Chamber, on which had been placed two red and gilded Thrones.

As Her Majesty entered Parliament House, the Royal Standard was broken on the central flagpole. Crossing the threshold of the Council Chamber, Black Rod announced "Her Majesty the Queen", whereupon a fanfare of trumpets was sounded which continued until Her Majesty had ascended the dais and turned about.

Her Majesty then bowing to the Diplomatic Corps on the right, and Church and State dignitaries on the left, said, "Pray be seated".

Her Majesty being seated, she commanded:

Black Rod will now summon the House of Representatives.

Black Rod, making three obeisances as he withdrew, proceeded to the Chamber of the House of Representatives, where Members had assembled at 2.30 p.m. to await the Royal Summons. Admitted, after giving the traditional three knocks on the door, Black Rod said:

Mr. Speaker, Her Majesty commands the immediate attendance of this Honourable House in the Council Chamber.

Mr. Speaker, preceded by Black Rod and the Serjeant-at-Arms (carrying the Mace) and followed by the Clerk and Clerk-Assistant and Members of the House, proceeded to the Council Chamber. At the entrance, Black Rod and the Serjeant-at-Arms stepped aside while Mr. Speaker, followed by the Clerk and Clerk-Assistant, entered to take up their positions in the centre of the Chamber. Black Rod and the Serjeant-at-Arms (with his Mace) then moved into position on the right of Mr. Speaker as Members of the House, led by the Prime Minister and the Leader of the Opposition, entered. When all Members were in position the Prime Minister and the Leader of the Opposition moved to the left and right of Mr. Speaker, bowing to him as they passed, and proceeded to positions on the right and left of the dais, Her Majesty acknowledging their bows as they approached it.

Addressing Members of the House, Her Majesty said:

Honourable Members, pray be seated.

The doors being locked, the Prime Minister rose from his place and, moving to a position immediately in front of her Majesty, bowed and presented the Speech from the Throne, which Her Majesty then read, as follows:

Honourable Members of the House of Representatives,—

It is with a feeling of real satisfaction that I speak to you, the elected representatives of the people of New Zealand, as your Queen, and that I exercise my prerogative of opening the fourth session of this thirtieth Parliament.

This is the first occasion on which it has been possible for your Sovereign to exercise this high function in person in New Zealand. I know how much my father, with his intense devotion to his people, would have valued this historic privilege, of which his ill-health so tragically deprived him. My constant prayer is that I may, in some measure, carry on that ideal of service of which he gave so outstanding an example.

The tragic disaster which occurred at Tangiwai on Christmas Eve has cast its shadow over us all, and I have experienced the most profound sadness and grief at the loss suffered by my people on that occasion. My husband and I feel most deeply for you all, and we have shared your sorrow with full hearts.

Our sympathy goes out to those who were bereaved by this terrible event, and we pray that they may have courage and faith to sustain them in their loss.

In addressing this Assembly, I feel especially conscious of the community of spirit which exists among the Parliaments of our Commonwealth. Our association of nations and peoples, united in the possession of common traditions and ideals, can fairly lay claim to greatness; and I can think of no greatness more worthy of respect than that symbolized by a firm faith in the strength of Parliamentary institutions and the rights of man.

A hundred years ago, when the people of New Zealand gained for themselves the right of responsible self-government, it would have required a prophetic imagination to have foreseen the possibility of the present occasion. But in these hundred years New Zealand has grown to be a sovereign and mature State, while the ocean surrounding these bountiful islands has become a main highway in a world which has itself been transformed. I welcome the ease with which, in these times, it is possible to travel from one part of the Commonwealth to another. It will always be my endeavour to take advantage of the opportunities afforded by our age to enter with ever closer sympathy and understanding into the problems and aspirations of my Government and people in New Zealand.

Though the world is making such rapid technical progress it has not—unhappily—been able to keep pace in the study and practice of the arts of peace. Nevertheless I am confident that, with that openness of mind to be expected from a new country, my Government and people in New Zealand will continue to contribute worthily towards the lessening of international tensions and the preservation of concord amongst the nations.

In the firm partnership of European and Maori peoples, for which New Zealand is justly renowned, you have set a high example. I have been deeply moved by the fervent expressions of loyalty and enthusiasm conveyed to me by the Maori people, for whom I cherish the highest respect and affection; and I am proud to see how my subjects of both races in this country are moving forward in unity together, each determined to make their full contribution to the progress and advancement of New Zealand.

I am also proud of the way in which my Government and people of New Zealand are discharging their trust in promoting the well-being of the peoples of the Pacific islands under their administration. I regret that it was not possible for me on this journey to visit these Island Territories; but their people know that I have the closest interest in their welfare and they are assured of my wholehearted affection.

New Zealand, through her steady progress in matters of social welfare and in the development of her agricultural and other industries, has won international esteem. It is my earnest hope and expectation that this progress will continue, and bring increased benefits and prosperity to her people.

My Ministers have deemed it advisable to introduce at this session of Parliament a Bill to amend the Judicature Act. This amendment, by providing for an alteration in the constitution of the two divisions of the Court of Appeal, will make for greater efficiency in the despatch of Court business. The passage of this measure at the present session of Parliament will enable it to be brought into effect in time for the first sittings of the Court of Appeal in the current year.

I wish to express most sincerely my warm appreciation of the arrangements which my Ministers have made for me to travel extensively and to meet my subjects in this country.

I pray that the blessing of Almighty God will rest upon your counsels.

On completion of the Speech, which took five minutes, Her Majesty, followed by His Royal Highness, left the Council Chamber, pausing slightly to hand Mr. Speaker the Speech. The procession,

led by Black Rod, moved slowly through the Members' Lounge to the top of the main steps, where the Guard of Honour gave the Royal Salute and the National Anthem was played.

As Her Majesty re-entered the building, the Guard of Honour withdrew. Re-entering the main vestibule, Her Majesty and His Royal Highness retired to Mr. Speaker's suite, from where, if they so desired, they could listen-in to the proceedings of the House, which have been broadcast since 23rd March, 1936.

Meanwhile, Members of the House had returned to their Chamber, where two newly elected Members took the Oath of Allegiance to Her Majesty. The Expiring Laws Continuance Bill was then read a first time *pro forma*. The House having asserted its right in traditional form to deal with its own business first, it next proceeded to consider the cause of summoning Parliament as outlined in the Speech from the Throne, the text of which was laid upon the Table by Mr. Speaker. The Prime Minister then moved that a respectful Address be presented to Her Majesty in reply to Her Majesty's Most Gracious Speech, and spoke to that Motion. The Leader of the Opposition having seconded the Motion, the question was put and carried unanimously. The Prime Minister then delivered to Mr. Speaker the following Address, which Mr. Speaker read to the House:

Most Gracious Majesty,

We, Your Majesty's most dutiful and loyal subjects, the Members of the House of Representatives of New Zealand in Parliament assembled, beg leave to offer our humble thanks for the Speech which Your Majesty has addressed to the House of Representatives.

We wish to express our gratification and deep sense of privilege at the honour which Your Majesty has bestowed upon us in opening this session of the thirtieth Parliament. Your Majesty is assured that we recognize this as an occasion of profound significance in the history of New Zealand.

We rejoice in Your Majesty's visit to our country, and more especially for the opportunity it gives to us, the representatives of the people in Parliament, of paying our loyal homage and heartfelt devotion to Your Majesty in person. We trust that your journey through New Zealand, which is of such rare significance and consuming interest to us, will also prove both agreeable and interesting to Your Majesty and His Royal Highness the Duke of Edinburgh.

We affirm our deep and abiding loyalty to Your Majesty, and pray that Your Reign may be a long and happy one, marked by peaceful progress and high achievement.

In assuring Your Majesty that our most earnest consideration will be given to the several matters referred to in Your Gracious Speech, we join with Your Majesty in praying for Divine Guidance in all our deliberations.

The Address in Reply being agreed to *nemine contradicente*, Mr. Speaker made the following announcement:

I have to announce that Her Majesty has been pleased to appoint the hour of 12.15 p.m. tomorrow at Government House as the time and place for the presentation of the Address in Reply to her Majesty's Most Gracious Speech.

After Mr. Speaker had read the following Message from Her

Majesty, delivered to him by the Prime Minister, the House resolved itself into Committee to consider its contents.

BY THE QUEEN

We transmit to the House of Representatives the draft of a Bill intituled An Act to amend the Judicature Act 1908, and We recommend the House to make provision accordingly.

At the Court at Government House, Wellington,
12th January 1954.

After the objects of the Bill had been briefly explained in Committee by the Attorney-General (Hon. T. C. Webb), the Message was reported back to the House with a recommendation that provision be made accordingly. The Bill was then ordered to be printed and read a first time. The leave of the House being granted to pass the Bill through its remaining stages that day, the second reading was taken, the Bill committed, reported back, read a third time and passed. The House having then adjourned at 3.44 p.m., the Clerk of the House (as Clerk of Parliaments) waited upon Her Majesty in Mr. Speaker's suite and presented the Bill for the Royal Assent.

At 4 p.m. Her Majesty (who meanwhile had changed into an afternoon frock) and His Royal Highness, accompanied by the Prime Minister and Mrs. Holland, left Mr. Speaker's suite and proceeded to the main vestibule, to be received by Mr. Speaker and Lady Oram and escorted through the Members' Lounge to the Council Chamber, where Members, the Clerk, Clerk-Assistant, Serjeant-at-Arms and Black Rod and the Chief Private Secretary and their wives (or nominated relative) were assembled. After presentation of the guests, refreshments were served, and guests came forward to speak to Her Majesty and His Royal Highness. Before re-entering the Council Chamber Her Majesty and His Royal Highness, with Mr. Speaker in attendance, made a brief inspection of the Chamber of the House of Representatives.

At 5.15 p.m. Her Majesty and His Royal Highness, escorted by Mr. Speaker and Lady Oram, and the Prime Minister and Mrs. Holland, and followed by the Members and their wives, left the Council Chamber and proceeded to the base of the main steps to return to Government House. As Her Majesty left Parliament House, the Royal Standard was lowered.

Wednesday, 13th January, 1954—Presentation of Address in Reply

At 11.30 a.m., at Government House, Her Majesty held a meeting of her Privy Council, and at 11.45 a.m. presided at a meeting of her Executive Council.

At 12 noon Mr. Speaker, preceded by the Serjeant-at-Arms and followed by the Clerk, Clerk-Assistant and Members of the House, left Parliament House for Government House to present the Address in Reply. Mr. Speaker, having taken up his position in the Ball-

room, with the mover (Rt. Hon. S. G. Holland) on his right, and the seconder (Rt. Hon. W. Nash) on his left, and with the Clerk, Clerk-Assistant and Sergeant-at-Arms immediately behind them, and Members formed in a semi-circle to the rear, Her Majesty was announced and entered. When in position on the dais she bowed to Mr. Speaker, who returned it, as did Members and Officers of the House.

Mr. Speaker, after reading the Address, handed it to Her Majesty, who replied, shook hands with Mr. Speaker and withdrew. Mr. Speaker and Members of the House thereupon returned to Parliament House.

Her Majesty's Reply was as follows:

I received with much pleasure the Address which has been adopted by the House of Representatives in reply to my Speech at the opening of the Fourth Session of the Thirtieth Parliament of New Zealand.

I thank you for your expression of loyalty and affection, by which I am deeply moved, and for your assurance that the matters to which I referred will receive your consideration.

State Luncheon for Members and Wives:

At 1 p.m. Her Majesty, accompanied by members of her personal staff, arrived at the base of the main steps of Parliament House and was escorted by the Prime Minister and Mrs. Holland to the Social Hall, where Members and their wives were assembled. At this delightfully informal function, the Leader of the Opposition said Grace as follows:

Bless, O Lord, these gifts to our use and help us to be steadfast in Thy service.

The Prime Minister later proposed the Toast to Her Majesty and His Royal Highness. No speeches were delivered.

Her Majesty left Parliament House at 2.15 p.m.

House meets:

At 2.30 p.m. the House assembled and Mr. Speaker reported the presentation to Her Majesty of the Address in Reply and read the Reply of Her Majesty. On the Motion of the Prime Minister, Her Majesty's Most Gracious Reply was ordered to be entered on the Journals of the House.

The Prime Minister then delivered to Mr. Speaker the following Message notifying Her Majesty's Assent to the Judicature Amendment Bill:

BY THE QUEEN

ELIZABETH R.

The Bill intituled The Judicature Act 1954 as finally passed by the House, having been presented to Us for Our Assent, We have assented to the said Bill.

At the Court at Government House, Wellington,

12th January 1954.

The House adjourned at 2.37 p.m.

It now only remains to be recorded that on the three visits made to Parliament House by Her Majesty—on 11th January to inspect the Guard of Honour and attend a State Luncheon, on 12th January to open Parliament in person, and on 13th January to attend a special State Luncheon for Members and their wives—the sun shone brilliantly from a cloudless sky and thus added brilliance to these historic events. With the exception of the private reception in the Council Chamber following the opening of Parliament, a complete film coverage in colour, as well as in black and white, was made. Accommodation was found on the floor or in the galleries of the Council Chamber, on the tiered seating in the Members' Lounge, and on the main steps of Parliament House, for 1,150 persons. In addition to being broadcast over a national hook-up, the proceedings in the Council Chamber and subsequently in the House of Representatives were relayed to guests in the Members' Lounge and to the public assembled in the grounds. Whatever else may be written of this Royal Visit, which concluded on 30th January, 1954, when Her Majesty and His Royal Highness sailed from Bluff on the *Gothic*, none will deny that its highlight was the Royal Opening of Parliament on 12th January, and that the picture of Her Majesty seated on the Throne in the Council Chamber was an historic scene and a profoundly moving occasion which will live for ever in the minds of those privileged to witness it.

[1] N.Z. Gazette Extraordinary (1953, No. 74). [2] *Ibid.* (1954, No. 4).
[3] 1953, No. 19.

IV. VISIT OF H.M. THE QUEEN MOTHER TO THE SOUTHERN RHODESIA PARLIAMENTARY EXHIBITION

BY ERSKINE GRANT-DALTON, M.A.(OXON.),
Clerk Assistant of the Federal Assembly

On Wednesday, 15th July, the Legislative Assembly of Southern Rhodesia was honoured by a visit from Her Majesty the Queen Mother and Her Royal Highness the Princess Margaret. They came to see an Exhibition, staged by the Library of Parliament, designed to show the people of Rhodesia the history of their Parliament, the way in which it works, and how it is related to all the other Legislatures of the Commonwealth. The Royal Visitors were met at the main entrance to Parliament House by the Speaker (Hon. T. I. F. Wilson, M.P.) and his wife, and conducted by them to the Lobby, where the Speaker presented the Officers of the House and their wives.

Her Majesty the Queen Mother and Her Royal Highness were

manifestly keenly interested in all they saw, and recalled with pleasure their last visit to Parliament, in 1947, when His late Majesty King George VI opened a session of the Legislative Assembly.

On 16th July, the Prime Minister, the Rt. Hon. Sir Godfrey Huggins, C.H., K.C.M.G., M.P., opened the Exhibition to the public. Thereafter the Exhibition was kept open from 9 a.m. to 6 p.m. daily (except Sundays) until 14th August. It aroused very great interest, and was visited by a large number of Rhodesians of all races, and tourists from neighbouring countries and overseas. One of the most pleasing features of the Exhibition was the fact that very many of the visitors took the trouble to thank the officials in charge, and to congratulate them on the show.

The display was divided into three sections: (1) Historical; (2) Parliamentary Procedure, or "How Parliament Works"; (3) The Legislatures of the Commonwealth.

In the first section were displayed various constitutional documents relating to Southern Rhodesia; a collection of portraits of the Administrators, Governors and Prime Ministers of the Colony; and books illustrating the history of Parliament. In addition, there were examples of the Great Seals of England, contrasted with the Public Seal of the Colony and various private seals.

The next section began with a group of three wax figures, dressed in the robes of Speaker, Clerk, and Serjeant-at-Arms respectively, standing behind a low glass case in which was displayed the Mace of Southern Rhodesia. In a passage and a room behind the Chamber simply worded placards, accompanied by examples of Bills in various stages, signed Acts, Questions, and so on, showed visitors how Parliament sets about its daily work. Here visitors were allowed to enter the official bay, in rear of the Chair, to inspect the Chamber. Government and Opposition benches, the Table, and the Chair were placarded, so that those not familiar with Parliament—and how few are!—could understand the arrangement of the House. This part of the Exhibition ended with a tribute to those who have done so much for Parliaments all over the Commonwealth: Erskine May and the successive Editors of his great work on procedure; Owen Clough; Ralph Kilpin, whose work on Procedure in South Africa is such an invaluable guide, and who, like his father before him, has done so much for Legislatures in Southern Africa; and Sir Frederic Metcalfe, to whom Parliamentary Officials all over the Commonwealth can turn for advice, as has always been the case with the Officers of Parliament at Westminster.

The last part of the Exhibition consisted of a magnificent collection of photographs illustrating very nearly all the Legislatures in the Commonwealth and Empire. The purpose of this display was to make clear the descent of all these Legislatures from the Mother of Parliaments at Westminster. Quite rightly, the photographs of the House of Lords and the House of Commons, grouped round a por-

trait of Her Majesty the Queen surmounted by the Royal Coat of Arms, were the best in the whole collection, although those contributed by other countries did not fall far short of this very high standard. Visitors were amazed at the great variety of these Legislatures, and at the same time deeply impressed by the very clear relationship they all bore to Westminster. In all, 59 Legislatures in the Commonwealth were portrayed, each group being displayed beneath the coat of arms of the country concerned. All the photographs had explanatory captions, and great care was taken to ensure the accuracy of these. Anybody who has ever worked in a Parliament or Legislative Council can imagine how very interesting these photographs were, showing as they did the Chamber or Chambers, Speaker, Officials, Mace, and building.

This section ended with photographs of the Capitol at Washington, and the Capitols of Virginia, New York, and Nebraska (there was, unfortunately, not sufficient room to show all the State Capitols).

The Exhibition was inspired by the "History of Parliament" Exhibition staged during the Festival of Britain, and now in the possession of the Hansard Society. It was made possible by the generous co-operation of all the Legislatures of the Commonwealth, who responded swiftly to our request for photographs. Their kindness will in a measure be repaid if they can realise how greatly the officials here enjoyed assembling the collection, and how deeply it impressed all who saw it. The Exhibition was the contribution of Parliament to the celebration of the one hundredth anniversary of the birth of Cecil John Rhodes, who was himself a good Parliament man.

V. THE PRESS

Answers to Questionnaire

Thirty-one Members have sent in answers to question 7 of Questionnaire XXII, on the practice of their Houses regarding admission of the Press to the Press Gallery, the Lobby, and other parts of the Parliament building. In addition, a certain number of answers on the same subject to the Questionnaire sent out in 1948 were in the Society's archives; these have been starred (*) in the table which follows, as they may be out of date.

The material thus accumulated is voluminous but indigestible. The Editors have concluded that they can best present it to Members by casting it into the form of a table, showing in each case the method of accreditation of journalists, the facilities available to them, and the lobbies, rooms, etc., to which they have access [a "dash" in the table merely indicates no information] thus:

House	Accreditation: Given by	Approved by	Pass issued (by)	Press Gallery (Accommodation)	Press Room(s)	"Lobby Correspondents"	Rooms to which Journalists are admitted: Members' Lobby	Library	Dining Room	Tea or Coffee Room	Members' Bar or Smoking-room	Strangers' Bar or Smoking-room	Ministers' Rooms	Party Rooms
United Kingdom:														
Lords	—	—	Lord Great Chamberlain	37	Yes	No	Yes	No	No	No	—	No	No	—
Commons	Papers or Assns. concerned	Speaker	Sjt. at Arms	161	Yes	Yes	Lobby corr. only	No	No[1]	No	No	No	No	—
Canada:														
House of Commons ..	"Press Gallery"	—	Sjt. at Arms	Yes	Yes	Yes	Lobby[2] corr. only	? Yes	Yes	"not restricted"				
Saskatchewan: Leg. Assembly ..	Assn.[3]	Speaker	—	Yes	—	No	Yes	Yes	Yes	—	—	—	—	—
Newfoundland: H. of Assembly ..	—	—	—	Yes	—	—	"By special permission"							
Australia:														
Senate	—	President	Black Rod	26 }	28		No[4] }	—[5]	—	Yes	—	Yes	Yes	—
H. of Representatives ..	Gallery Committee	Speaker	Sjt. at Arms	44 }			No[4] }							
South Australia:														
Leg. Council	—	—	—	Yes	3	No	No	Yes	No	Allowed in "other parts of the building"				
H. of Assembly* ..	—	—	—	Yes	Yes	No	No	—	—	—	—	—	—	—
New South Wales: Leg. Assembly* ..	Papers concerned	Speaker	Sjt. at Arms	Yes	Yes	No	Yes	—	—	—	—	—	—	—
Queensland: Leg. Assembly* ..	Paper concerned	Speaker	Yes	About 10	Yes	Limited	—	—	—	—	—	—	—	—
Victoria: Both Houses*	Assn.	Speaker and President	—	Yes	Yes	Yes	—	—	—	—	—	—	—	—
Western Australia: Leg. Assembly* ..	Paper concerned	Speaker	Sjt. at Arms	Yes	Yes	No	—	—	—	—	—	—	—	—
Tasmania:														
Leg. Council	—	—	—	Yes }	Yes {	—	—	—	—	No	—	No	—	—
H. of Assembly ..	—	—	—	Yes }		—	—	—	—	Yes	—	Yes	—	—
New Zealand:														
H. of Representatives ..	Official[6] Assn.	Speaker	Speaker	Yes	Yes	No	No	—	No	—	No	? Yes	—	No
South Africa:														
Senate	Papers concerned	—	Yes	Yes	Yes	No	No	? No	? No	Yes	? No	? No	—	—
H. of Assembly* ..	Assn.	Speaker	Sjt. at Arms	43	10	Yes	Lobby corr. only	No	No	Yes	No	No	—	—

House	Accreditation: Given by	Approved by	Pass issued (by)	Press Gallery (Accommodation)	Press Room(s)	"Lobby Correspondents"	Rooms to which Journalists are admitted: Members' Lobby	Library	Dining Room	Tea or Coffee Room	Members' Bar or Smoking-room	Strangers Bar or Smoking-room	Ministers Rooms	Party Rooms
Cape Provincial: Council	—	—	—	—	—	No	"Admitted to all parts"							
South West Africa: Leg. Assembly ..	—	—	Yes	Table	No	No	Yes	—	—	Yes	—	—	—	No
Ceylon: H. of Representatives ..	—	—	—	20	—	No	No	Same facilities as general public						
India: Lok Sabha	State Govts.† Press Gallery Committee	Speaker	Yes	Yes	—	Yes	Lobby corr. only	Allowed in "other parts of the building"						
Bihar: Leg. Council	—	—	Yes*	Yes	—	—	Yes during recess hours only							
Leg. Assembly	Paper concerned	Speaker	Clerk*	Yes	—	—	Yes and to "other parts of the building"							
Madhya Pradesh: Leg. Assembly	—	—	Speaker	Yes	—	—	No	Allowed in "other parts of building"						
West Bengal: Leg. Assembly	—	Speaker	Secretary	Yes	—	—	No	Passes as for Press Gallery						
Madras: Both Houses★	—	Speaker and Chairman	Secretary	Yes	—	—	No	—	—	—	—	—	—	—
Uttar Pradesh: Leg. Assembly★ ..	—	—	—	Yes	—	Yes	No restrictions							
Bombay: Both Houses★	Papers concerned	—	Yes	Yes	—	No	Admitted to "other parts of the building"							
Pakistan: Constituent Assembly	Press Gallery† Committee	—	Yes	Yes	—	Yes	Lobby corr. only	—	Yes and "other parts of the building"					
East Bengal: Leg. Assembly★ ..	Papers concerned	Speaker	Yes	Yes	—	No	No	—	—	—	—	—	—	—
Rhodesia and Nyasaland: Southern Rhodesia: Leg. Assembly	Unofficial Assn.	Speaker	—	Yes	Yes	No	No	Can enter "other parts of the building"						No
Northern Rhodesia: Leg. Council	Papers concerned	Clerk†	—	Yes[1]	Yes[1]	—	No	No	No	Yes[2]	—	—	—	—

House	Accreditation: Given by	Approved by	Pass issued (by)	Press Gallery (Accommodation)	Press Room(s)	"Lobby Correspondents"	Rooms to which Journalists are admitted: Members' Lobby	Library	Dining Room	Tea or Coffee Room	Members' Bar or Smoking-room	Strangers' Bar or Smoking-room	Ministers' Rooms	Party Rooms
Nigeria:														
H. of Representatives ..	—	—	Dir. of Govt. Information Services	20	—	Yes	Lobby corr. only	—	—	—	—	—	—	—
Eastern H. of Assembly..	—	—	Yes	Yes	—	No	No	—	—	—	—	—	—	—
Western H. of Assembly	—	—	Yes*	—	—	—	—	—	—	—	—	—	—	—
Northern H. of Assembly	Papers concerned	—	Yes*	Yes	—	—	—	—	—	—	—	—	—	—
Sudan:														
Both Houses	Journalists Assn.	Speaker	Sjt. at Arms	Yes	Yes	Yes	Lobby corr. only	No	—	—	—	—	No	No
British Guiana:														
Leg. Council	Paper concerned	Clerk	Yes	10 (more on special occasions)	Yes	No	Yes	—	—	—	—	—	—	—
East Africa:														
High Commission ..	—	—	Clerk	Yes	—	No	Yes—and into "other parts of the building"							
Kenya:														
Leg. Council		Speaker	Speaker	Yes	—	No	—	—	—	—	—	—	—	—
Malta†	Papers concerned	—	—	10	—	—	—	—	—	—	—	—	—	—
Mauritius:														
Leg. Council	Papers concerned	Governor	Yes*	—	—	—	—	—	—	—	—	—	—	—
Singapore:														
Leg. Council	—	President	? None	—	—	—	—	—	—	—	—	—	—	—
Trinidad and Tobago:														
Leg. Council	—	Speaker	Speaker	Tables	—	—	"Admission unrestricted"							
Uganda:														
Leg. Council	No	No[8]	Not yet necessary	Visitors' Gallery	—	—	No restrictions yet found necessary							

* Pass may be revoked if report published:
—which "is unfair" (W. Nigeria).
—"which the Governor considers unfair" (Mauritius).
—"which the President considers unfair" (N. Nigeria and Singapore).
—containing misrepresentation, or confidential matter, or if published in advance (Bihar).

† With assistance from the Press Information Department of the Government.

[1] A separate Press Refreshment Room is provided.
[2] Other journalists by invitation of Members.
[3] Which receives an annual grant from the House.
[4] King's Hall is available for interviewing Members.
[5] Newspaper reading room available.
[6] Which has the right to call on the ushers to eject unruly journalists.
[7] Probably in 1954 when new building ready.
[8] A Standing Order giving the President powers of control is envisaged.

VI. REFORM OF THE HOUSE OF LORDS AND THE LIFE PEERS BILL

BY THE EDITORS

On 3rd and 4th February the House of Lords discussed Viscount Simon's Life Peers Bill on second reading.[1] On 17th March the House discussed a Motion moved by the Marquess of Exeter to limit, by Standing Order, the voting rights of Peers.[2] And on 3rd November, in the debate on the Address, the question of the House of Lords reform was again touched upon.[3] This article attempts to review the arguments and points made in these three debates as briefly as is consistent with clarity. The names of the Peers bringing forward the various arguments are added in brackets.

The text of the Life Peers Bill is as follows:

1.—(1) Her Majesty may by Letters Patent appoint not more than ten persons who are British subjects, in each calendar year, beginning with the year 1953, to be Lords of Parliament.

(2) Every such Lord of Parliament, unless he becomes otherwise entitled to sit as a member of the House of Lords, shall by virtue and according to the date of his appointment be entitled during his life to rank as a Baron by such style as Her Majesty may be pleased to appoint, and shall be entitled to a Writ of Summons to attend, and to sit and vote in the House of Lords, but his dignity as a Lord of Parliament shall not descend to his heirs.

(3) "Persons" in this section means either men or women.

During the debate on the second reading the following points were made:

(A) There was now no justification for continuing the exclusion of women from the House, and there was general agreement, which had been several times expressed in the House, that they should be admitted. (Lord Simon.)

This view was strongly controverted by Lord Llewellin, who contended that the experience which the other place had had of women was unsatisfactory. In particular, he thought women in Parliament were apt to be "bossy" and to have cranky ideas.

(B) Since 1911 there had been general agreement that it was not the function of the Lords to enter into head-on conflict with the Commons, but to accept the decisions of the other House. (Lord Simon.)

Lord Salisbury, in the debate on the Address, agreed with this view, and added that the Lords should not oppose or attempt to interpret the will of the people, but should give an adequate opportunity for popular opinion to crystallise and make its views known. This was the minimum requirement for a satisfactory second Chamber.

Lord Silkin added his view that the Lords should be as important and influential as the Commons without rivalling them.

(C) Mere heredity should no longer be the basis of membership

of the House, but, in the words of the agreed statement issued after the conference of 1948, membership should be based on "personal distinction or public service". (Lord Simon.) In answer to this it was alleged (by Lords Moran, Hailsham and Llewellin) that a House of Lords consisting of Peers chosen for their ability and distinction would inevitably get into conflict with the House of Commons. Further, that to try and create a Senate, composed of persons of distinction and ability, but lacking the "traditions" and "mystique" of the House of Lords, was not practical politics. (Lords Hailsham and Teynham.)

(D) It was unfortunate that the House, in 1856, had frustrated the attempt made in that year to create Life Peers. (Lord Simon.) Four other such attempts, apart from the present, had been made, by Bill or otherwise, in the intervening period.

(E) Lord Jowitt, on behalf of the Opposition, moved an amendment to the effect that "this House declines to give a Second Reading to a Bill which purports to alter the constitution of this House in any one particular without any consideration of such wider changes as Her Majesty's Government have suggested should be the subject of discussion between the Parties". He said that an inter-party conference had been suggested on this subject in November, 1952, and that it would be wrong to prejudice the issue of that conference by accepting or rejecting this Bill, which dealt only with one part of the subject-matter which would be before the conference. They should wait until the conference had met and deliberated.

Lord Swinton, for the Government, announced that invitations had been sent out for the conference that day.

On 17th March Lord Jowitt said that the Labour Party had refused the invitation; and the Queen's Speech delivered on 3rd November concluded with the sentence: "My Ministers will give further consideration to the question of reform of the House of Lords."

This, said Lord Salisbury, in the debate on the Address, did not bind the Government to put forward their own proposals; but equally it did not preclude them from introducing a Bill on the subject.

(F) Lord Samuel declared that one of the functions of a second Chamber was to act as a safeguard against an extreme group which might gain power in the Commons and introduce a dangerous measure without a popular mandate. But Lord Shepherd declared that if Lord Samuel was thinking of the Communists, he could be certain that, whatever the law might be, they would not allow the House to meet. In practice, therefore, the Lords could only be a safeguard against a moderate group such as the Labour Party.

(G) Lord Moran gave the following figures: In the four years 1945 to 1949, an average of 15 Peers a year had been created. Of the 857 present Members of the House, 176 were of the first creation, and had not inherited their dignity. In the four sessions 1947 to

1951, 318 Peers addressed the House; of these 147 were Lords of the first creation. These figures seemed to him to prove that there was no necessity for the Life Peers Bill, inasmuch as new blood was constantly entering the House and the new Peers were doing more than their share in its deliberations.

(H) The House of Lords should not be composed of politicians but should represent "the floating vote". It should contain representatives of the factory, pit and council school. The growth of the doctrine of the mandate, and the disappearance of independent Members in the Commons, had left a gap which it was the duty of the Lords to fill. (Lords Moran, Chatfield and Wavell.)

In answer to this it was asked by Lords Polwarth and Brocket how these unpolitical Peers were to be chosen if not by the present hereditary system? The conferment of peerages upon men of ability and distinction would, in practice, turn out to be indistinguishable from other instances of Government patronage; and, in short, the idea of an independent non-political House could not be achieved by selection, though the present hereditary system did make some approach towards it.

(I) The authority of the present House, like that of the Monarchy, the Commons, and the Judges, was based upon prescription and tradition, and a new House of Lords would not have that authority. Cromwell had attempted in 1649 to create such a new non-hereditary House, and had been compelled almost at once to return to the hereditary principle. (Lords Moran and Teynham.)

(J) Although it was possible on some political questions for one Government to reverse the enactments of its predecessor (as, for example, over the nationalisation of road transport) the Constitution could not be amended and re-amended in that way. Agreement between all the parties was, therefore, essential before the House could be reformed. (Lord Halifax.)

(K) Life Peers, such as were proposed in the Bill, might be nominated, as had been suggested by the Bryce Committee, by a "Joint Committee of Lords and Commons". Further, the hereditary powers of the House might be entrusted to a body (perhaps 200) of hereditary Peers to be elected by the Lords as a whole on the analogy of the Scottish Representative Peers. (Lord Teynham.)

(L) The Lords at the moment could make the government of the country impossible by perversely using the powers—*e.g.*, of annulling delegated legislation—which they at present possessed. But they had never exercised these particular powers. The authority of the House was, therefore, more important than its powers, and no scheme of reform should ignore this. (Lord Hailsham.)

(M) The selection of Peers of Parliament from men of distinction and ability would prevent young men from sitting in the House. (Lords Mansfield, Llewellin and Brocket.) One of the great advantages of the hereditary system would thereby be lost.

(N) The allegation that the present House was vitiated by its permanent conservative majority overlooked the fact that a second Chamber in a country with an unwritten Constitution must always be conservative—with a small "c"—in character. (Lord Balfour of Burleigh.) Upon which Lord Lucas of Chilworth asked why it was necessary for the House always to be Conservative, with a large "C", when the division bells rang?

(O) It was in these days becoming more and more difficult for men who had inherited a peerage and must earn their living, often far away from London, to attend the House. (Lords Silkin and Polwarth.) The operation of the hereditary principle was, therefore, more difficult than it had been in the past.

(P) The majority in the Lords could not and should not always be the same as that in the Commons. Apart from the practical difficulties of recruiting enough Peers to ensure that the two majorities were the same for each Parliament, there would be the further difficulty that men of "distinction and ability" could not always be expected to follow the Party line in the Lobbies. (Lords Llewellin and Chatfield.)

(Q) The bogey of "backwoodsmen", who were alleged to descend on the House upon rare occasions in order to defeat progressive measures, could be exorcised by a Standing Order providing that more than ten Lords should not take the Oath on any day after the opening of Parliament. (Lord Saltoun.)

(R) The suggestion that no proposal for reform should be introduced by a Private Member's Bill was strenuously denied by Lord Simon. This Bill, he said, had been intended to provoke the Government into a declaration of their intentions, and it had succeeded in so doing. Moreover, a number of Peers outside the Government had in the past produced Bills for the reform of the House—among them the late Lord Salisbury.

At the end of the debate a Government amendment was moved that "the debate on the Second Reading of this Bill be adjourned pending the discussion on the reform of this House which Her Majesty's Government have suggested should take place between the Parties". Lord Simon accepted this amendment, which was agreed to.

On 17th March the Marquess of Exeter moved to resolve,

That this House is of opinion that no Peer, except he has obtained leave of absence under Standing Order No. XVIII, should vote on a Division of this House unless he has, if resident in England or Wales, attended the House at least *x* times, and, if resident elsewhere, attended at least *y* times, during the previous Session in which the House has sat for Public Business on twelve or more days; provided that this Resolution would not apply (*a*) in the case of a newly created Peer until after the expiry of a complete Session following the date of his introduction, nor (*b*) in the case of a Peer succeeding by descent until after the expiry of a complete Session following the date of his succession.

The arguments in favour of the motion were, briefly, as follows:

(*a*) It would do away with the possibility of "backwoodsmen" descending upon the House and swamping the Division Lobbies;

(*b*) It was within the power of the House to make a Standing Order in the sense suggested because any House of Assembly had an inherent power to regulate its own proceedings; because the House had, in fact, in the past, prohibited Peers from attending and voting; and because there already existed a Standing Order prohibiting the practice of voting by proxy, which had been for centuries an undoubted right and privilege of the peerage;

(*c*) Lord Wensleydale had been given a patent conferring upon him a peerage for life, and the House had ruled—

> that neither the said Letters Patent, nor the said Letters Patent with the usual Writ of Summons . . . can enable the grantee therein named to sit and vote in Parliament.

This proved that the House had power to regulate the terms upon which its members sat; and even if it had not, the words of the patent ("seat, place and voice") conferred upon a Peer a right to speak and express his opinion, but not necessarily to vote in the Lobbies, since the process of voting by division was unknown in the Lords until the seventeenth century, whereas the patent was much earlier;

(*d*) The Queen's Writ strictly enjoined and commanded a Peer, upon his faith and allegiance, to attend and give his counsel in Parliament. In imposing penalties upon those who failed to obey Her Majesty's command, the House would merely be reinforcing the Writ and acting in accordance with its intentions.

The Leader of the House (Lord Salisbury), the Lord Chancellor and Viscount Simon all agreed that the intentions of Lord Exeter's motion were desirable. They could not, however, accept the motion because it was impossible to put it into force by Standing Order. A Bill would be required for the purpose. The Lord Chancellor said that in view of the terms of a patent, the House could never, by Standing Order, vary the rights or duties of a Peer. The "counsel" given by the House to the Sovereign was given by Resolution of the House, and every Peer, in order to give counsel, must therefore vote. Voting by proxy, the suspension of which, by Standing Order, had been relied upon as an analogy for the present proposal, had originally only been allowed by express licence of the King. And the present opinion was that the House had no power to exclude any of its members, except after judicial process and sentence. The cases of the Earl of Bristol, the Earl of Middlesex, and of Lord Chancellor Bacon, all of which had taken place in the 1620's, proved this.

It was further urged (by Lords Schuster and Elton) that there was a practical objection to Lord Exeter's proposals, in that certain Peers, whose contribution to their debates was occasionally of very great importance, such as Judges and Generals, ought not, in general, to take part in their debates. Such men, if they did speak, ought not to be prevented from supporting their opinions with their votes if necessary; otherwise their advice would not be as weighty and responsible as it should. Moreover, why should Peers, whose knowledge and opinions on certain subjects were of value to the House, be compelled to attend a number of debates in which they had no interest, merely for the sake of "clocking in"?

At the end of the debate Lord Exeter withdrew his resolution.

[1] 180 *Hans.*, 133 ff. [2] 181 *Hans.*, 5. [3] 184 *Hans.*, 53, 154, 179.

VII. THE SELECT COMMITTEE ON DELEGATED LEGISLATION

BY THE EDITORS

Reference was made in Volume XXI[1] to an interim Report from the House of Commons Select Committee on Delegated Legislation. This Report was agreed to on 27th October, and has since been published.[2] A summary of the Report, and the conclusions contained therein, is appended.

Introductory[3]

Having observed that the legality of an Act of Parliament cannot be challenged in or by the Courts of Law (whereas subordinate legislation is open to such challenge), and that in this respect Orders in Council made *in virtue of the Royal Prerogative* rank with the former rather than the latter category of legislation, the Committee briefly described the growth of delegated legislation from early Tudor times to the last quarter of the 19th Century.[4] That this growth was inevitable and in many respects desirable was admitted by numerous authorities whose writings and evidence were quoted.[5]

The Committee then quoted some figures extracted from Sir Cecil Carr's book, *Delegated Legislation*,[6] in which it is stated:

> Last year (1920), while 82 Acts of Parliament were placed on the Statute Book, more than ten times as many "Statutory Rules and Orders" of a public character were officially registered under the Rules Publication Act, 1893. The annual volume of public general statutes for 1920 occupied less than 600 pages; the two volumes of statutory rules and orders for the same period occupy about five times as many. The excess in mere point of bulk of delegated legislation over direct legislation has been visible for nearly thirty years (*i.e.*, since 1890).

The comparable figures for 1952 were:

Acts of Parliament, 64—one volume of 1,437 pages (including, as it happened, over 900 pages of merely consolidating statutes); Public Instruments registered, 1,029—3 volumes of 3,980 pages; Local Instruments registered, 1,283—not published collectively.[7]

Turning to the question of nomenclature, the Committee quoted a portion of the Report of the Donoughmore Committee of 1932[8] as follows:

The expressions " regulation ", " rule " and " order " should not be used indiscriminately in statutes to describe the instruments by which the law-making power conferred on Ministers by Parliament is exercised. The expression " regulation " should be used to describe the instrument by which the power to make law about procedure is exercised. The expression " order " should be used to describe the instrument of the exercise of (*a*) executive power and (*b*) the power to take judicial and quasi-judicial decisions.[9]

The Committee concurred with these recommendations.[10]

Whereas certain instruments of delegated legislation were required by the enabling Act to be laid before Parliament, others were not. This requirement first appeared in Acts of the 1830's, but was not regularly insisted upon until a long way into the 19th century.[11] The Rules Publication Act, 1893, which required the registration, numbering and publishing of subordinate legislation, also provided for the different treatment of statutory rules of general application and those of local, personal or private application. It was with the former that the present Report was mainly concerned, since Parliament had not on the whole thought it worth while to exercise much control over instruments of local application.[12]

The next paragraph[13] of the Report deals with the annual totals of subordinate legislation, and reads as follows:

Since 1894, when registration began, the local instruments normally (except in wartime) outnumber the general instruments sometimes in the proportion of more than four to one. The annual total of local instruments is sometimes noticeably swollen by the passing of a particular enabling statute. In 1904, for instance, there was an upward leap of 700 in the total of local instruments. This was due to a flood of orders under section 11 of the Education Act, 1902, appointing foundation managers for the schools. In the case of the general orders, the annual totals would be seen to exhibit remarkable steadiness from 1894 to 1911, and again, at a rather higher level, from 1922 to 1932. They climb steeply during a world war and, for a time, they outnumber the local instruments.

The total of 1,204 general instruments in 1918 was almost three times the total of 1913. The total of 1,901 in 1942 was almost three times the total for 1937. Since 1948, when the total was 1,508, there has been an annual decline. The figure fell to 1,379 in 1949; to 1,211 in 1950; to 1,166 in 1951 and to 1,087 in 1952.

The annual combined total of all instruments, general and local, has never exceeded 3,000; the annual total of general instruments has never exceeded 2,000. But to estimate the total of all instruments in operation today would be mere guesswork.

Some instruments, which deal apparently with local matters, are nevertheless required to be laid before Parliament and are treated as if they dealt with matters of a general nature; 79 of the 377 instruments considered by the Statutory Instruments Committee during the first half of 1953 (up to 13th July) were of this nature, and were made up as follows:

37 sets of London Traffic Regulations; 14 orders restoring rights of way suspended under War Regulations; 6 rearranging boundaries of constituencies; 6 Scottish hydro-electric schemes; 3 amending Local Acts; 3 bringing into force in specified areas the statutory provisions for special designations of milk; 2 dealing with open spaces in London; 5 relating to Local Courts; 2 altering statutory areas for gas and electricity; 1 relating to levy of expenses in a fisheries district.[14]

The Committee then outlined the procedure followed by Departments, firstly, in drafting a clause in a Bill giving power to make regulations, and secondly, in making the regulations themselves.[15]

(1) *Drafting of Enabling Clauses:* Matters of policy and principle are dealt with in the Bill itself, and regulation-making powers are limited to matters (*a*) of procedural or technical detail, (*b*) in which elasticity is desirable, and (*c*) in which new powers are being created and the line of future development cannot be foreseen. The Minister throughout is responsible for the whole line of proposed legislation.

(2) *Drafting of Regulations:* Outside interests which may be affected (*e.g.*, local organisations) are, where possible, consulted informally. The Instrument is then drafted by the legal staff of the Department (or occasionally by the Parliamentary draftsmen), and signed by the Minister or other person deputed by him. In certain cases, at the Minister's discretion, subordinate legislation is submitted to the Legislation Committee of the Cabinet, which is presided over by a Senior Cabinet Minister and normally includes the Lord Chancellor, the Leaders of the two Houses, the Law Officers and the Chief Whips; this is obligatory in the cases of:

(*a*) all Orders in Council under emergency or transitional legislation.
(*b*) all statutory instruments likely to affect a large number of Departments whose interests cannot conveniently be ascertained by direct consultation.
(*c*) all statutory instruments likely to give rise to criticism by the Scrutiny Committee hereinafter referred to.
(*d*) all statutory instruments involving any departure from precedent, *e.g.*, in the type of penalties imposed, in the procedure relating to such matters as appeals, or in encroachments on the liberty of the subject.

The Committee then made a synopsis of the terms of reference and recommendations of the Report of the Donoughmore Committee.[16] *Inter alia*, that Committee had recommended the setting up of a Standing Committee in each House at the beginning of each Session to consider a report on every Bill containing a proposal to confer law-making power on a Minister, subject to the following procedure:

Every regulation made by a Minister in the exercise of delegated law-making power, and laid before the House in pursuance of a statutory requirement, would stand referred to the Committee. It would be the duty of the Committee to consider the regulation or rule forthwith, and to report to the House within 14 clear days of the day on which the regulation or rule was laid.

The Committee were not to report on the merits but would report:
(1) Whether any matter of principle was involved.
(2) Whether the regulation imposed a tax.
(3) Whether the regulation was permanently or never challengeable or challengeable for a time.
(4) Whether it was wholly or partly consolidating.
(5) Whether there was any special feature of the regulation meriting the attention of the House.
(6) Whether there were any circumstances connected with the making of the regulation meriting such attention.
(7) Whether the regulation, on the grounds that it was exceptional, should be starred.

The Report of the Committee was to be laid on the Table of the House as soon as it was printed. As soon as the Report was tabled, the regulation would then have to be brought before the House in the Orders of the Day and taken immediately after Questions under a limit of time analogous to the present ten minutes rule. In the case of a starred regulation (not requiring an affirmative resolution of the House), any Member would have the right to move a resolution of annulment without notice. In the case of an unstarred regulation (not requiring an affirmative resolution of the House), any Member would have the right to give notice of a resolution for annulment to be moved immediately after Questions that day week or immediately before the motion for the adjournment for the Recess, whichever should be the sooner.

This recommendation had never been adopted in its entirety, but was partly implemented by the setting up in 1944 of the Select Committee on Statutory Rules and Orders (subsequently renamed the Select Committee on Statutory Instruments, and for convenience termed in this Report the "Scrutiny Committee"). The composition and terms of reference of this Committee are familiar to readers of the JOURNAL[17] and are described in paragraphs 47 and 48 of the Report.

There were two limitations on the operation of the Scrutiny Committee:

(*a*) Owing to the delay in setting up the Committee at the beginning of a Session, the time-limit for moving an address against some instruments may expire before the Committee examines them. That, in fact, happened this Session. This defect could be mitigated, if not overcome, by making it a permanent Standing Committee instead of one appointed each Session.
(*b*) The time-lag caused by obtaining and considering the Department's answer has the consequence that the Committee's Report sometimes reaches the House too late to be effective.[18]

Up to the end of 1952, the Scrutiny Committee had seen some 6,900 instruments and reported on 93 of them. The Report quoted the following comment by Sir Cecil Carr:

The total of nearly 7,000 instruments examined may be compared with the total of approximately 19,400 instruments officially registered in the same period. Probably some 10,250 of this gross total were public instruments. If so, and if generalisation is pardonable on figures so imprecise, it seems that not quite 70 per cent. of the general instruments come within the purview of Parliament as either requiring affirmative approval or exposed to the negative procedure. Anyone who cares to study the contents of the annual volumes of statutory instruments will probably be satisfied that much of the text is of routine or administrative character involving no great issues of liberty or public rights.

A description followed of the provisions of the Statutory Instruments Act, 1946 (which was brought into force on 1st January, 1948). These provisions, which govern the present United Kingdom Parliamentary procedure relative to Statutory Instruments, have never been fully described in the JOURNAL; it is not, however, proposed to summarise them here, for two reasons. In the first place, the paragraphs in question[19] stand somewhat apart from the rest of the Report, the comprehension of which does not depend on them. Secondly, the operation of the Statutory Instruments Act is in itself worthy of a separate Article, which it is hoped to publish in an ensuing volume of *The Table*.

Parliamentary Control[20]

In each enabling Act the Minister proposes, and Parliament decides:

(*a*) whether power shall be delegated to make subordinate legislation,
(*b*) to whom the power shall be delegated,
(*c*) the extent of the power,
(*d*) the form in which it shall be exercised,
(*e*) whether the instrument whereby the power is exercised shall or shall not be laid before Parliament,
(*f*) whether the instrument shall be subject to an affirmative or a negative resolution or neither.

An instrument which must be laid under (*e*) above may be dealt with in various ways:

(*a*) Laying without further provision for control;
(*b*) Laying with deferred operation;
(*c*) Laying with immediate effect but subject to annulment;
(*d*) Laying in draft but subject to resolution that no further proceedings be taken;
(*e*) Laying in draft and requiring affirmative resolution;
(*f*) Laying with operation deferred until approval given by affirmative resolution;
(*g*) Laying with immediate effect but requiring affirmative resolution as a condition of continuance;

of which (*c*) and (*e*) are the most common.

Affirmative and Negative Procedures[21]

Parliament itself determines in each case whether affirmative or negative procedure shall be used. This determination, however, is

not made upon any strict principle, and it had been said in the House by the Lord President of the Council that

the matter was one for the determination of Parliament, and it would be unwise to attempt to formulate any precise rules which would fetter the discretion of Parliament and of the Government.[22]

Sir Alan Ellis, K.C.B., Q.C., the Senior Parliamentary Counsel, stated in evidence before the Committee that in his opinion the affirmative procedure was preferable in three types of cases, (1) where the powers conferred would substantially affect the provision of an Act of Parliament, *e.g.*, by increasing or limiting its duration, (2) where financial charges were imposed, and (3) where the parent Act fixed the purpose but left the whole substance of the law to be dealt with by subordinate legislation. He considered that at least three-quarters of the instances of affirmative procedure would fall within these classes.[23]

Statistics provided by the Clerk of the House were then quoted, to the effect that in Session 1951-52 the House had spent fourteen and a half hours on affirmative resolutions, and 25 hours on Motions under the negative procedure (hereinafter referred to as "prayers"). In the portion of the 1952-53 Session up to 5th February, the total times had been 18 hours 8 minutes and 9 hours respectively.[24] The time spent on affirmative resolutions is divided in a slightly greater proportion after than before 10 p.m. (the hour of interruption). Prayers, which are of course moved by private Members, are normally taken after 10 p.m. The Government can, in theory, adjourn the House before a prayer is reached, but in practice this is rarely done, although the power might be effective and practicable against obstruction.[25]

Evidence given by Captain Crookshank, the Leader of the House, suggested that there might be a diminution of prayers when food rationing was abolished:[26] it was pointed out on the other hand by the Clerk of the House that

Every year new Acts are passed containing new powers for making Statutory Instruments involving the Affirmative or Negative procedure and enlarging the opportunity for debate.

This remained true, in spite of the most careful Ministerial scrutiny of enabling legislation.[27]

Further reference was then made to the failure by Parliament to adopt the Donoughmore Committee's recommendation in favour of the setting up of Standing Committees to consider all Bills conferring law-making powers. The objects of such a Standing Committee were, in the Committee's opinion, wholly achieved by (1) the careful examination of all enabling clauses by private Members during the passage of a Bill, and by the responsible Minister and the Cabinet Committee during its drafting, (2) the examination of all instruments laid before the House by the Scrutiny Committee and also a number

of unofficial committees of Members, (3) the process of debate on prayers or affirmative resolutions, and (4) other incidental proceedings in the House, *e.g.*, questions to Ministers, Motions of censure on a Minister responsible for a particular instrument, and Supply debates.[28]

Detailed proposals and recommendations[29]

The Report concludes with the discussion in turn of 13 specific proposals, as follows:

(1) *Should the recommendation made by the Donoughmore Committee in their Report (paragraph* 15, XII, *pages* 67-68) *be adopted that a Standing Committee be set up for the purpose of considering and reporting on every Bill containing a proposal to confer a law-making power on a Minister?*

For reasons already stated, the Committee disagree with the recommendation.

(2) *Should the Government issue a memorandum with the enabling Bill drawing attention:*

(a) *to the nature and extent of the proposed delegation of powers, and, in particular,*
(b) *to any proposal therein to give power to impose a tax, or to a power which would have a retrospective effect or which would protect the delegated legislation from judicial review?*

The Committee consider this to be unnecessary, because

The usual memorandum now accompanying each Bill could and very often does refer to the clause whereby it is proposed to confer legislative powers. That is enough and the rest left to the vigilance of Members.

(3) *Should the proposals for delegation be side-scored or printed in special type?*

The Committee consider this to be unnecessary.

(4) *Should a Standing Committee be appointed to consider every Statutory Instrument and separate those of major importance from those of minor importance; those of general nature from those of local nature?*

The Committee consider this to be unnecessary in the light of the distinction already drawn between instruments of general and local application.

(5) *Should the present Scrutiny Committee be a permanent Standing Committee? Should its powers and duties be extended?*

If so, in what respects? Should it, in its report to the House, give detailed particulars of its reasons for drawing the attention of the House to a particular Statutory Instrument?

While agreeing in general that the terms of reference of, and the work done by, the present Scrutiny Committee are entirely satisfactory, the Committee recommend (i) that the appointment of the Scrutiny Committee at the beginning of each Session should be

treated as a matter of urgency (in order to avoid the expiry of the "forty days" before a previously laid Statutory Instrument can be reported on), and (ii) that the Scrutiny Committee should include with its Report to the House (*a*) any letter from it to a Government Department in which the point in issue on a Statutory Instrument, and the reason for inviting a Departmental Memorandum, are indicated, and (*b*) as now, the reply of the Department.

(6) *Should the period of 40 days, standardised by the Statutory Instruments Act, 1946, be extended?*

The Committee recommend:

That the 40 days shall commence from the day when the statutory instrument is available to Members in the Vote Office and that the date when it is so available be placed thereon; but that where the Scrutiny Committee in their report draw the particular attention of the House to a statutory instrument, then the time shall be 10 days from the date when the report of that Committee is made or the statutory 40 days, whichever time is the longer. [This proposal would, of course, require legislation.—ED.]

(7) *Should all or some Statutory Instruments be referred to a Standing Committee? Should that Committee then consider both those subject to affirmative resolution and those subject to annulment by prayer or either or some, and, if so, which? Should the Committee decide all questions relating to Statutory Instruments or should it report thereon to the House? If the latter, should there be an opportunity for debate on the report in the House or should the question be decided by the House on the report without debate? What steps should be taken to ensure that the Members, who have put down a prayer against an instrument, or who have some particular interest in the matter, are represented on or before the Committee?*

This procedure would give rise to certain difficulties. If Members' rights were to be properly safeguarded, it would involve the reference of *all* Statutory Instruments to the Committee, since prayers are often set down, and affirmative resolutions opposed, in respect of instruments on which the present Scrutiny Committee does not report. The composition of the Standing Committee (including the addition to it or attendance before it of additional Members interested in particular instruments) would create other problems. With regard to the functions of such a Committee—

Is the Committee to decide once and for all the fate of the instrument? Or is it to report its views after debate, and, presumably (if necessary), division, to the House? Then when is the matter to come before the House? At what hour? And who is to be responsible in the case of the negative procedure for bringing it before the House? Will the time of the House be saved? Finally, will this procedure not diminish to some degree the right of the individual Member to express and record his objection to any statutory instrument?

In view of all these difficulties, the Committee do not regard the proposal as feasible.

(8) *Should a procedure be introduced which would allow for*

amendments of a Statutory Instrument to be moved, debated, and decided?

This would involve the ever-increasing engagement of Parliament in matters of detail (the avoidance of which is one of the purposes of delegated legislation), and is therefore not recommended.

(9) *Should proposed Statutory Instruments be submitted in draft by the Minister concerned to a Standing Committee so that he can explain its provisions and its purpose to the Committee and hear any criticisms there may be thereon from the Committee before he makes it and lays it before Parliament?*

Although such procedure might, by achieving to some extent the prior approval of the House to each instrument, conceivably have the effect of securing the setting down of fewer prayers, the Committee consider that it would be impossible to operate (from the point of view both of Ministers and Members) and would derogate from the Minister's responsibility for the instruments he makes. Ministers in any event may (and frequently do) consult particular Members who have some special interest in or knowledge of matters in respect of which an instrument is to be made.

(10). *Should a prayer not merely take the form of praying for the annulment of the Statutory Instrument, but should it contain reasons for objection? And should the House be given an opportunity of registering opposition (if it so chooses), not only to the Statutory Instrument as a whole but to some part of it to which it is opposed?*

The Committee recommend the amendment of the present procedure in order to permit attention to be drawn in the prayer to the part of the instrument to which objection is taken, and the reasons for such objection, without, however, permitting a separate motion or vote on the particular issue raised in the reasoned objection. The motion and vote should be on the prayer as a whole.

(11) *Should there be any distinguishing marks placed on Statutory Instruments other than those already provided?*

Each Statutory Instrument is at present headed by (i) its number in the annual series, (ii) the date on which it was laid, and (iii) the date when it came into operation. The Committee recommend that there should be an additional note stating whether it is subject to the affirmative or negative procedure or exempt from both processes.

(12) *Could the Statutory Instruments be brought before the House for consideration and decision at times more convenient than are now permitted while, at the same time, preserving the rights of individual Members to object to affirmative resolutions or to enter a prayer for annulment?*

The Committee's answer to this question is the kernel of their Report; the relevant paragraphs[30] are therefore quoted in full:

104. The following suggestions have been made:

(*a*) That the House should meet (when necessary) at 11 a.m. on Mondays, Tuesdays, Wednesdays and Thursdays to consider prayers for annul-

ment. Two days' notice of a morning sitting would have to be given. The House would sit to consider the prayer or prayers put down for that day and then, on the conclusion of such consideration or at 1 p.m. at the latest the sitting would be suspended until 2.30 p.m. During the morning sitting the rule about a quorum should not apply and the House could not be counted out. No decision would be reached at the morning session, but the debate on the prayer would stand adjourned to the next day but one (excluding Friday) on which the House sits. Then on that day the question on the prayer would be put at the end of the last item of effective Government business, that is, normally, at 10 p.m., but without debate. It is also suggested that the Government, if it so chose, could put down for consideration and debate in the morning sitting such affirmative resolutions as it selected and the procedure would be the same as in the case of prayers for annulment.

Your Committee do not recommend the adoption of this change in the hours that the House sits; morning sittings would, in many instances, lessen the rights of individual Members. Moreover, in all cases where the House is considering a statutory instrument the presence of the Minister in the House is desirable and often necessary. Ministers and their staff are required at their Departments during the mornings. Morning sittings of the House would upset all the routine of administration.

(*b*) That a procedure similar to that followed in the case of Private Bills should be applied to prayers for annulment, which would come, therefore, before the House on the appointed day at 7.30 p.m.

Your Committee do not recommend the adoption of this proposal. It would give almost unlimited opportunities for interfering with Government business and the normal working of the House. Instead of relieving the House this would increase the difficulties.

(*c*) That there should be a change in the present procedure as follows:

The prayer should come before the House as at present, that is, after the end of Government business.

The debate should go on until concluded or until the House is adjourned or counted out. No division on the prayer would take place then. The debate on the prayer would stand adjourned to a day named in the following week. The adjourned debate would come on again at the end of Government business, normally 10 p.m. The debate then would be confined to two speeches, each not longer than ten minutes, to be followed immediately (if called for) by a division.

Your Committee consider this proposal offers a very substantial improvement on the present procedure. Your Committee, however, point out that there is in it a very drastic change from the established practice that the division (if called for) should follow hot-foot upon the debate.

Your Committee do not recommend the proposal.

105. A further suggestion was made, namely:

That the procedure shall continue as at present except that if a prayer for the annulment of a Statutory Instrument is under discussion at 11.30 p.m. Mr. Speaker shall at that hour put the question before the House unless he shall be of opinion that,

(i) owing to the lateness of the time of starting the discussion of the prayer, or

(ii) owing to the importance of the issues raised by the Statutory Instrument,

the time for debate has not been adequate, the debate shall be adjourned to

the next ordinary sitting day of the House (other than a Friday), when it shall be resumed at the end of Government business for that day, and it shall be subject to the same procedure as on the first day.

Under this proposal the rights of the individual Member are substantially preserved. Any Member may put down a prayer for annulment. The Statutory Instrument and the objections to it will be considered by the whole House. The debate may ordinarily be limited to one and a half hours, that is, from 10 p.m. to 11.30 p.m., which ought to provide time for adequate debate on many Statutory Instruments. If Mr. Speaker is of opinion that the time between the commencement of the debate and 11.30 p.m. is too short or, if he is of opinion that, owing to the importance of the Instrument, an hour and a half is too short a time for adequate discussion, he shall adjourn the debate until 10 p.m. on the next ordinary sitting day, when the same procedure will follow. Your Committee believe that only in exceptional circumstances will Mr. Speaker consider a second adjournment necessary, but he will be empowered so to order, if he is of opinion that that is the proper course.

This procedure would ensure that the House will not have to consider Statutory Instruments during the small hours of the morning and the debates themselves should be more concentrated and effective.

Your Committee recommend the adoption of this proposal.

(13) *Should there be a new procedure for the lodging and hearing of petitions to the House against the continuance of a particular Statutory Instrument brought by a person or class of persons particularly aggrieved by the instrument?*

It was proposed that a Standing Order should be made whereby petitions against Statutory Instruments from specially aggrieved persons might be remitted to a Committee of 3 Members nominated from a panel chosen by Mr. Speaker and that this Committee might hear evidence if necessary and report to the House. The Committee did not agree with this proposal, on the ground that aggrieved persons had their grievances brought to the attention of the House by Members.

[1] P. 43. [2] H.C. (1952-53) 310. [3] *Ibid.*, paras. 5-63. [4] *Ibid.*, paras. 4-9. [5] *Ibid.*, paras. 10-17. [6] 1921 ed., p. 2. [7] H.C. 310, paras. 19-20. [8] *Cmd.* 4060 (*see also* JOURNAL, Vol. I, p. 12; Vol. X, pp. 86, 89-91). [9] *Ibid.*, p. 64. [10] H.C. 310, paras. 21-3. [11] *Ibid.*, paras. 24-5. [12] *Ibid.*, paras. 26-8. [13] *Ibid.*, para. 29. [14] *Ibid.*, paras. 30-1. [15] *Ibid.*, paras. 33-40. [16] *Ibid.*, paras. 41-3. [17] *See* Vol. XIII, p. 171; XIV, pp. 152, 156-8; XV, pp. 130-1; XVI, pp. 33-4; XVII, pp. 50-1. [18] H.C. 310, para. 49. [19] *Ibid.*, paras. 53-63. [20] *Ibid.*, paras. 64-72. [21] *Ibid.*, paras. 73-91. [22] *Ibid.*, para. 74. [23] *Ibid.*, paras. 75-6. [24] *Ibid.*, para. 77. [25] *Ibid.*, para. 79. [26] *Ibid.*, para. 82. [27] *Ibid.*, paras. 83-4. [28] *Ibid.*, paras. 85-91. [29] *Ibid.*, paras. 92-107. [30] *Ibid.*, paras. 104-5.

VIII. THE SELECT COMMITTEE ON NATIONALISED INDUSTRIES

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The Select Committee, which 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, might be desirable in those methods, reported upon 27th July, 1953, its enquiry completed. A similar Committee had been set up in the previous session,[1] and had confined its attentions mainly to the possibilities of Questions to Ministers as a method of obtaining further information for Parliament about the nationalised industries. It had reported to the effect that no major extension of the present field of Questions in regard to the great Public Corporations was desirable. The Select Committee set up during the last session concentrated its attention on the desirability or otherwise of establishing a sessional committee of Parliament to conduct a continuous examination of the affairs of the nationalised industries, and report upon them to one or both Houses. It was with this in view, as appears from the Minutes of Evidence, that most of the witnesses were examined. The committees of the two sessions are jointly referred to in the Report as "we", to indicate the continuity of personnel and subject.

The Report[2] emphasises the need for accountability, arising out of the vast amount of capital, income and expenditure involved in firms under public ownership; the charges upon consumers and users of the necessities of civilized life which they provide; and the Treasury guarantee of the interest paid on the stock of nationalised industries. It also emphasises (paragraph 5) the threat to the ordered management of the industries due to public pressure, especially from political interference. The obstruction to the closing of railway branch lines is mentioned, but it may be assumed that the Committee had also in mind the necessity to maintain uneconomic prices for the products and services of the corporations in order to avoid public clamour, and the interference of the Government with the attempt to raise the London Transport fares soon after they had taken office.

The arguments for and against the establishment of a sessional committee are then set out. It is interesting to observe that the arguments *contra* occupy about twice as much space in the printed Report as, and carry much more apparent weight than, the arguments *pro*, which are very briefly summarised. A select committee offers opportunities for more intimate and extensive study of problems, free from political controversy and with the advantage of some continuity of specialist *personnel*. On the other hand, the

establishment of a select committee would seem to be a negation of the principle underlying the establishment of independent corporations: it would raise the whole question of managerial responsibility; it would impede the working of the industries by making the management and staff over-cautious. The great public corporations had not yet had time to settle down into integrated bodies.

The Select Committee, nevertheless, decided in favour of the proposed committee because, as they explain in the Report, if more information about the nationalised industries is to be obtained by the House of Commons, it can only be obtained by a Committee. The House of Commons can only obtain information in three ways:

(1) by question-time and debate,
(2) by moving for returns, and
(3) by setting up a committee to investigate and report.

Of these methods (1) has been fully explored; (2) is partly obsolete and not entirely satisfactory. The remaining possibility is therefor the appointment of a committee, and the Select Committee had to face the alternatives of accepting the objections alleged against a sessional select committee of investigation and abandoning any hope of enlarging the information available to the House by its own initiative; or of recommending the appointment of a committee with terms of reference calculated to avoid, as far as possible, the dangers envisaged.

An attempt is made to define or restrict the scope of the proposed committee. The nationalised industries to be considered are those which are conducted on a commercial basis, and whose annual receipts are derived from services rendered or goods supplied. This, it is explained, is intended to exclude such corporations as the New Towns Corporations. It does not exclude such bodies as the B.B.C., or even the Port of London Authority; and the term "annual receipts" may need closer definition. The suggestion that the proposed committee should be a Joint Committee is dismissed with regrets on the ground that its work will be largely financial and could therefore be more fittingly done by a House of Commons committee. The proposed committee should have power to investigate policy, so far as it is not the result of a direction from a responsible Minister, and future plans and prospects. The suggestion that the public corporations should produce estimates of anticipated revenue and expenditure, on the analogy of the estimates of public departments, is put forward. The committee should have power to send for persons, papers and records, and power to appoint subcommittees; it should be set up by a Standing Order, modelled on the Committee of Public Accounts Standing Order, to avoid political interference with the appointment of the committee at the beginning of sessions. The proposed Standing Order is set out in the Report.

The Report recommends the appointment of a permanent officer

of the committee with functions as similar to those of the Comptroller and Auditor-General in respect of Government Departments as is possible in the differing conditions prevailing in the Government Departments and Public Corporations respectively. The qualifications required of such an officer are a matter of difficulty. The statutory auditors of the Corporations are not suitable for the position, because their allegiance is to the Corporations. The Comptroller and Auditor-General himself could not do the work without a vast expansion of his department and considerable disorganisation of the auditing profession. Clearly the proposed officer could not possess the inside knowledge of the finances of the Corporations which the Comptroller and Auditor-General possesses in the case of Government Departments. In the end the only qualification of the officer of the committee recommended in the Report is that he should be independent of the Government, and it is recommended that he should be a servant of the House of Commons, and irremovable except by an address from both Houses.

The Report emphasises that the proposed committee should be considered by the corporations "not as an enemy, or a critic, but as a confidant, and a protection against irresponsible pressure, as well as a guardian of the public interest". The select committee was evidently anxious to avoid the conception of an "investigating committee".

The evidence on which the Report is based is extremely interesting. None of what may be called the expert witnesses (Chairmen of Public Corporations, etc.) were enthusiastically in favour of the proposed committee. On the other hand, it was roundly condemned by Lord Reith, Chairman of the Colonial Development Corporation and former Director-General of the B.B.C., by Sir Geoffrey Heyworth, Chairman of Unilever, and by Mr. Herbert Morrison: by Lord Reith principally (and dramatically—"who is the boss?") on the ground that it would destroy managerial responsibility, and by Sir Geoffrey Heyworth partly on the ground that the public corporations should first be given time to develop as integrated organisms. The Comptroller and Auditor-General (Sir Frank Tribe) and the then Chairman of the British Transport Commission (Lord Hurcomb) gave the proposal a certain amount of measured support. Sir Frank Tribe, in his evidence, suggested that the guarantee of compensation stock by the Treasury opened the door to the uncontrolled disbursement of public money on a large scale. He suggested that if the great Corporations were tempted not to charge economic prices for their goods and services, the resulting deficit might call in the Treasury guarantee, and that very large sums might be paid out of the Consolidated Fund without Parliament being fully aware of it. This suggestion does not seem to have weighed very heavily with the Committee. Mr. Herbert Morrison was very anxious to avoid the timidity which he considered was bound to

occur in the management of an industry subject to constant supervision by a parliamentary committee.

This argument he repeated in the debate upon the Report of the Select Committee (8th February, 1954)[3] which, as it was taken upon a motion "That this House do now adjourn" did not commit the House either to approval or disapproval. The Leader of the House, however (Captain Crookshank), opened with a speech expressing the general approval of the Government for the Report, with modifications. He said that the Government were anxious to keep the field open for a Joint Committee, considered that the proposed committee should not examine the future plans and programmes of the nationalised industries, should not appoint sub-committees, should have, not a permanent officer appointed on the terms recommended by the Report, but a Treasury liaison officer, and should not publish all its evidence. Mr. Assheton, Chairman of the Committee which had reported, was concerned to rebut Mr. Morrison's objections. He suggested that if the Chairmen of the Corporations were likely to be timid as a result of the investigation of a select committee they ought not to have been appointed.

The ultimate decision of the Government was announced, by the Lord Privy Seal and Leader of the House, in an answer to a question in the House on 13th July, 1954.[4] The Government accepted in principle the idea of a "standing committee" on nationalised industries as recommended by the Select Committee, with the modifications which were generally expected. The Committee is to be a sessional select committee not appointed by Standing Order, although the Standing Order proposed in the Select Committee's Report will be the Order of Reference of the new committee, subject to certain alterations. The committee is to investigate the *current*, and not the *general* policy and practice of the nationalised industries: it is to consist of a maximum of 14 and not 21 members, with a quorum of 5 and not 7, and no power to appoint sub-committees. There is another significant departure from the recommendations of the Select Committee. The staff of the committee will not include an officer of the status of the Comptroller and Auditor-General, but will have the assistance of liaison officers from the Treasury and appropriate Government Departments. This, again, was expected from what was said in the debate. It is in fact a little difficult to envisage the work of an officer of such a high calibre, with no department working under him, and no qualifications comparable to those which Mr. Speaker's Counsel must possess in order to assist the Select Committee on Statutory Instruments. A skilled accountant might be very useful to the committee in digesting the voluminous accounts of the Boards, and seizing upon their salient features, but his usefulness would depend entirely upon individual ability and natural endowments.

The Government announce that they consider it inappropriate that

the proposed committee should investigate matters which have been decided by the Minister concerned or clearly engage his responsibility, or which are normally decided by collective bargaining arrangements. In this the Government follow the Select Committee's Report. They further agree that the proposed committee should not be a joint committee. The Committee is to report from time to time and to publish its evidence except where such publication might be held to be contrary to public interest.

[1] *See* JOURNAL, Vol. XXI, Art. VII.
[2] H.C., 235 (1952-53).
[3] 523 *Hans.*, 833-962.
[4] 530 *Hans.*, 279-81.

IX. THE SELECT COMMITTEE ON CLERGY DISQUALIFICATION

BY R. S. LANKESTER,

A Senior Clerk in the House of Commons and Clerk to the Select Committee on Clergy Disqualification

On 19th October, 1950, the House of Commons resolved:

> That this House, having taken into consideration the Report of the Judicial Committee of the Privy Council in the case of the Reverend James Godfrey MacManaway[1] elected a Member to serve in the present Parliament for the constituency of Belfast West, declares that he was at the time of his election and is disabled from sitting and voting in the House of Commons by reason of the fact that, having been ordained a priest according to the use of the Church of Ireland, he has received episcopal ordination.

Sir David Maxwell Fyfe, on behalf of the then Conservative Opposition, had moved to add to the proposed Motion:

> but at the same time urges that a Royal Commission be set up to deal with the state of the law as disclosed in the Report, thus avoiding in future an inconvenience similar to that now caused to the electors of Belfast West.

He withdrew this amendment on the understanding that "some body would be established to consider the question" of clerical disability to sit in the House of Commons. On Second Reading of the Reverend J. G. MacManaway's Indemnity Bill[2] on 18th April, 1951, Sir David Maxwell Fyfe again pressed the need for the matter to be enquired into.[3]

Mr. Cyril Black asked the Secretary of State for the Home Department on 31st January, 1952,

> whether a decision has yet been reached as to the character and terms of reference of the body of inquiry to be set up in connection with the issues raised by the case of the late Reverend J. G. MacManaway.

The Leader of the House (Mr. H. Crookshank) replied:

I have been asked to reply. The Government propose to ask the House, to agree to the appointment of a Select Committee to examine and report on the whole question of clergy disqualification.[4]

On 6th May, 1952, a Select Committee was accordingly appointed to consider whether:

any amendment is desirable in the law relating to the disability of certain ministers of religion from sitting and voting in the House of Commons

and twelve members were nominated to serve on it. The Committee was empowered to send for persons, papers and records. Its quorum was five.[5]

That Committee heard evidence from Sir Frederic Metcalfe, the Clerk of the House, Mr. W. S. Wigglesworth, the Secretary to the Diocesan Chancellors' Committee, and the Archbishop of Canterbury, and reported to the House on 23rd July:

Your Committee have considered the matters to them referred, and, being unable to complete the Inquiry, recommend that a Committee on the same subject be appointed in the next Session of Parliament, and that the Minutes of Evidence already taken before this Committee be made available to them.[6]

On 7th November, in the new Session, a similarly constituted Committee with the same Order of Reference were appointed, and the Minutes of Evidence taken before the Committee in the last Session were referred to them.[7] They heard evidence from Mr. J. R. Philip, the Procurator for the Church of Scotland, the Most Reverend Edward Myers, Coadjutor Archbishop of Westminster, the Right Rev. Robert McNeil Boyd, Bishop of Derry and Raphoe, and the Right Rev. Edward William Williamson, Bishop of Swansea and Brecon. The Committee also received written observations from various religious bodies not directly affected. In their Report[8] made to the House on 11th June, 1953, the Committee summarised the apparent present legal position. It appeared that

a broad distinction is made between those ministers of religion who have been ordained by a bishop and those who have not. With the exception of ministers of the Church in Wales, those with episcopal ordination are ineligible to be elected. With the exception of ministers of the Church of Scotland, those not episcopally ordained are eligible to be elected. While a priest or deacon of the Church of England can render himself eligible to sit in the House of Commons by availing himself of the provisions of the Clerical Disabilities Act, 1870, other episcopally ordained clergy, whether of Churches in full communion with the Church of England or not, cannot have recourse to this or any similar provision. Ministers of the Church of Scotland can demit their status and thus avoid the disability.

The Committee indicated the various anomalies which arose. Some clergy were debarred from being elected Members while others were not. The bar was without regard to whether a clergyman was actively engaged in his ministry or not. Some debarred clergy, on

divesting themselves of their religious office, became eligible for election; others remained debarred.

In evidence given before the Committee, the Archbishop of Canterbury and the Bishop of Derry and Raphoe both wished the present disability to remain attached to their Churches. The Bishop of Swansea and Brecon wished it to be extended to the Church in Wales. Archbishop Myers, in relation to the Roman Catholic Church, while not seeking any change in the law, would have preferred the disability to be imposed by ecclesiastical rather than by civil law. No Church, whose clergy were not episcopally ordained, sought to have its clergy disabled from sitting. Mr. Philip, for the Church of Scotland, strongly urged that the disability should be removed from the ministers of that Church. To meet the case of loss of vocation several witnesses recommended that the provisions of the Clerical Disabilities Act, 1870, should be extended to all episcopally ordained clergy. The Committee also considered whether the non-performance of religious functions for a specified period prior to an election might be deemed to remove the disability.

The Committee found no evidence of great difficulties or hardship which called for urgent attention, nor of public demand for any alteration of the law. The only known case of hardship since 1801 was that of Mr. MacManaway. Either of the simplest ways to remove the anomalies, that is, either to remove the disability from all ministers of religion, or to impose it on all of them, would have run counter to the wishes of some of those Churches affected. The Committee considered that "so many other loyalties and duties are involved that it would be wrong to deal with the issue of clerical disability purely as a matter of civil liberty". Moreover, not only would the spiritual membership of the House of Lords be called into review, but in the Committee's opinion clerical disability ought not to be dealt with in isolation from a general review of all the various grounds of disability imposed on those wishing to stand for Parliament, which were outside the Committee's Order of Reference. The Committee rejected any limited action to deal with particular anomalies as likely to create fresh anomalies and to call in question the basis upon which the disqualification rested.

They therefore recommended "that no change in the law should at present be made".

[1] *See* JOURNAL, Vol. XIX, pp. 27-33.
[2] 4 & 5 Geo. V. c. 91.
[3] H.C. Deb., Vol. 486, c. 1846-52.
[4] H.C. Deb., Vol. 495, c. 347.
[5] C.J., 1951-2, p. 218.
[6] H.C., 1951-2, No. 246.
[7] C.J., 1951-2, p. 10.
[8] H.C., 1952-3, No. 200.

X. JERSEY: THE MINQUIERS AND ECREHOUS

By F. de L. Bois, M.A.(Oxon.),
Greffier of the States of Jersey

The recent decision of the International Court of Justice unanimously finding that the Sovereignty of the Minquiers and Ecrehous is vested in the Crown of England has brought brief fame to these two reefs which previously were little known outside Jersey and the coastal regions of Normandy and Brittany. The judgment of the court has established no new principle of international law and it is therefore unlikely that the present wider interests in these Islets will be kept alive; as it is, most people who live in sight of the Minquiers and Ecrehous have never set foot on their shores, for they are rarely visited except by yachtsmen and fishermen, both amateur and professional.

The Minquiers, the larger of the two reefs, lies to the south of Jersey and consists of a widely scattered group of islets and rocks. At low tide, the area is greater than that of Jersey itself, but at high tide only the heads of the plateau show above water. The principal islet is "Maîtresse Ile", which lies eleven and a half sea miles from Jersey and seventeen sea miles from the nearest point on the French coast. The islet itself measures some two hundred yards by fifty yards, and contains a house for the Bailiff of Jersey, a customs house and a first-aid building; there are also the ruins of a number of other buildings, as well as a wooden building erected by the French, of which more hereafter. A small plot of arable soil has been known to grow potatoes. Before the war the buildings now in ruins were in use, but during the occupation of the Channel Islands by the Germans they fell into a state of dilapidation, which was accelerated by the action of the occupying forces in removing the woodwork for fuel. Only the houses owned by the States of Jersey have been repaired and "Maîtresse Ile", at the present time, has a very desolate appearance.

There are two other principal heads known respectively as "Les Maisons" and "Les Pipettes", the former being said to be habitable, though no one has ever attempted to build a house there.

Unlike the Minquiers, the Ecrehous reef is a slender chain lying to the north-east of Jersey at an average distance of seven miles from the Jersey coast and eight miles from the coast of France. Another dissimilarity is that the main islets at the Ecrehous lie close together, three of them being habitable, "Maître Ile", "Marmotière" and "Blanc Ile". "Maître Ile", the largest of the three, measures some 300 yards by 100 yards and is let to a private individual. At one time it was inhabited by monks attached to the Norman Abbey of Val Richer and the ruins of the priory are still visible.

"Marmotière", on the other side of a narrow channel which

almost dries out at the spring tides and then can be crossed on foot, has fourteen houses, including a customs house. Two new houses have recently been built, but the area available for building is now almost completely covered. The third islet, "Blanc Ile", is connected to "Marmotière" by a high bank of stones which is covered at high tide: On this islet there is one house and the ruins of another, in which Phillipe Pinel, who became popularly known as "Le Roi des Ecrehous", lived for some fifty years towards the end of the last century.

For a visit of pleasure, the Ecrehous are unrivalled, but for fishing the Minquiers are undoubtedly to be preferred. A great delicacy to be found there is the ormer, a shellfish which can only be collected when the tide is at its lowest level. The ormer, its name derived from "oreille de mer", is indigenous to the Channel Islands and the neighbouring French coast. It is a univalvular ear-shaped shellfish measuring in length anything up to six inches; the average length is about four inches. It is very like the abalone and is possibly a smaller version of the same fish; there is insufficient mother-of-pearl in the shell to be of any commercial use as such, but the flesh is extremely palatable. Prawns are also found in abundance, but, strangely enough, few shrimps. Shore fishermen will also find lobsters, crabs and congers. The Minquiers are, in fact, an amateur fisherman's paradise. For this reason, in particular, it was with relief that the news of the Hague judgment was received in Jersey. News of the fact that sovereignty over the islets was in dispute had been received in Jersey with some surprise. From time immemorial the insular authorities had (or so it seemed) exercised acts of sovereignty. Transfers of land were effected through the Jersey registry, rates and taxes were levied, offences were tried in the Jersey courts, official visits were paid by Committees of the States of Jersey; France seemed in no way interested. Then, in 1929, a Frenchman started to build a hut on "Maîtresse Ile" in the Minquiers; he did not proceed very far, however, for no sooner had the foundations been laid than he desisted, apparently on the instructions of the French Government following a note from the United Kingdom Government.

All was quiet again until 1939, when an artist of the French Navy, "Marin Marie", erected a refuge for French fishermen on the "Maîtresse Ile". The matter was reported, but the Government of the United Kingdom were at that time too preoccupied with other affairs to concern themselves with this trespass by a French national on British soil.

In June, 1940, the Channel Islands were occupied by the Germans, and, from that time until the Islands were liberated in 1945, no Jerseyman was allowed to go to the Minquiers or the Ecrehous. It so happened, however, that the neighbouring French coast was liberated in the summer of 1944, some ten months before the libera-

tion of Jersey, and it appears that, during that interval, the reefs were fished by the French. From that time onwards, fishing by the French and visits by French excursionists increased to such an extent that it was thought necessary to ask the French Government to give an unequivocal acknowledgment of the sovereignty of the Crown over the two reefs. Negotiations in this respect did not produce the results hoped for, and on 14th September, 1948, the States of Jersey concurred in a recommendation of the United Kingdom Government that the matter should be referred to the International Court of Justice. An approach having been made to the French Government, that Government expressed the desire that the question of fishery rights should be referred to the Court along with the sovereignty issue, so that the Court having decided on that issue might have power to decide whether the losers on sovereignty had any, and if so what, fishery rights in the area. The French Government also considered that, before the matter proceeded to the Court, there should be discussions to see whether a practical solution of the fishery question could be found which would be acceptable to both sides. On 5th April, 1949, the States decided that the proposals were acceptable, with the result that meetings between delegations of the United Kingdom, Jersey and French Governments took place in London in July, 1950, to discuss the fishery question.

The first meeting was held at the Foreign Office on 17th July, 1950, and further meetings were held on the following days until, on 26th July, the terms of a draft agreement were settled. This draft was initialled on behalf of the three delegations present at the meeting. The draft provided that the agreement should be subject to ratification, and it was contemplated that the ratification should be conditional upon and contemporaneous with ratification of an agreement for the submission to the International Court of Justice of the sovereignty issue.

On 10th April, 1951, the texts of two agreements, the first, in the terms of the draft, regarding rights of fishery in the areas of the Ecrehous and Minquiers, and the second with regard to the sovereignty issue, were presented to the States, and the States, having considered them on 4th May, decided to offer no observations on them. Instruments of ratification of both agreements were exchanged on 24th September, 1951, and the States took note of that fact on 30th October.

On 15th January, 1952, the States noted that the special agreement for the submission of the dispute to the International Court had been notified to the Registrar and, so far as the States were concerned, no further record appears until 26th November, 1953, when the Bailiff presented to the States a letter from the Secretary of State saying that he had learnt with great satisfaction of the decision of the International Court of Justice in the recent arbitration relating to the sovereignty of the Minquiers and Ecrehous, and asking that

the Bailiff should convey to the States, on the occasion of their next meeting, his pleasure at this most welcome judgment. The Secretary of State also expressed his warm appreciation of the valuable contribution made to this desirable result by the arduous preliminary labours of Her Majesty's Attorney-General for Jersey in connection with the preparation of the voluminous and impressive case submitted for the consideration of the International Court, and by his skilful argumentation before the Court during the hearing.

On the same day, the States passed two resolutions. The first resolution gave formal expression to their keen satisfaction at the successful outcome of the proceedings and to their gratitude to Her Majesty's Government in the United Kingdom for having used their utmost endeavours to secure the confirmation of Her Majesty's title to the islets, and placed on record the Assembly's warm appreciation of the energy and skill devoted to the preparation and presentation of the case by Sir Lionel Heald, Q.C., M.P., Her Majesty's Attorney-General, Professor E. C. S. Wade, Messrs. G. G. Fitzmaurice, C.M.G., D. N. N. Johnson and J. C. Lambert, of the Foreign Office, and the late Mr. R. S. B. Best, also of the Foreign Office. The second resolution expressed, in the name of the People of Jersey, to Cecil Stanley Harrison, O.B.E., Her Majesty's Attorney-General for Jersey, profound thanks for the invaluable services rendered by him both throughout the preliminary stages of the proceedings and at the hearing of the case before the International Court.

It remains only to add that, although the case was approached at all points by the United Kingdom Government as being primarily, if not entirely, the case of the Island of Jersey, no charge whatsoever was made to the Island for the very able and distinguished services rendered by the servants of that Government in the preparation and presentation of the case.

XI. REFERENCE TO A ROYAL COMMISSION OF A MATTER AFFECTING PARLIAMENTARY PRIVILEGE

By H. K. McLachlan, J.P.,

Clerk of the Legislative Assembly of Victoria

On 17th September, 1952, the Honorable Member for Ballarat (Hon. T. T. Hollway), a member of the Liberal and Country Party, moved the following Motion:

1. That the Government no longer possesses the confidence of this House because (*a*) it has perpetuated an electoral system which denies a majority of electors the right to determine the character and form of government in this State, and (*b*) by its lack of action it has demonstrated unwillingness to alter

this system before the next general election, and thus threatens to nullify the decision of the people by continuing the undemocratic conditions under which the State suffers today.

2. That this House expresses the opinion that redistribution of Legislative Assembly electorates can be effected democratically only on the basis of the division of each of the Commonwealth electorates for the State of Victoria into two Legislative Assembly districts.

3. That this House wishes His Excellency the Governor to be respectfully informed that a Government can be formed to carry out the electoral reforms indicated in this resolution.

The Motion, which was supported by five other Liberal and Country Party Members and the Labour Party, was defeated by one vote.*

On 30th September, 1952,[1] the Leader of the Liberal and Country Party (Hon. L. G. Norman), by way of "personal explanation", advised the Legislative Assembly that he was in possession of certain affidavits[2] which had been handed to him with the request, in each case, that he take the proper action in relation thereto. He gave the following outline of the contents of certain of the affidavits which, he claimed, dealt with attempts to gain support for the no-confidence Motion moved by Mr. Hollway:

The first affidavit to which I refer is made by Sir Archie Michaelis, the Hon. Member for St. Kilda and the Speaker of the Legislative Assembly. At this stage, Mr. Speaker, I desire to say that I am sure that everyone will join with me in an expression of profound regret that your high office in this Parliament has been dragged into this scandal. Sir Archie Michaelis has stated that on 16th September last a man named Raymond Ellinson called on him at Parliament House and said that he had just left the Hotel Windsor, where he had been with Mr. Hollway, Sir Gordon Snow, and—Sir Archie Michaelis understood Ellinson to say—Mr. Cain, M.L.A. I shall deal with that statement in a moment. He states that Ellinson said that they—apparently the people he had just left—would "do the world" for him if the Speaker would help them in the crisis then current. He said that Sir Archie Michaelis could be Agent-General, could have a further term as Speaker, and that he would not be opposed at the next election. After advising Ellinson that he would act in accordance with precedent in anything in connection with his position as

* Vic. Parl. Deb., 16th-17th September, 1952, pp. 1893-1960. At this time the Legislative Assembly consisted of three parties—the Country Party (Government), numbering 13 Members and led by the Hon. J. G. B. McDonald; the Labour Party (Opposition), numbering 24 Members and led by the Hon. John Cain; and the Liberal and Country Party (supporting the Government), numbering 27 Members and led by the Hon. L. G. Norman; there was one Independent Labour Member. Mr. Hollway, supported by five other Members of the Liberal and Country Party, moved his no-confidence Motion which had the support of the Labour Party. Its purpose was to defeat the Government, establish a "stop-gap" Ministry, and with Labour support put through a Redistribution of Seats Bill and then seek a dissolution, the election to be fought on the proposed new boundaries. Briefly the new seats scheme provided for the abolition of the existing 65 Assembly electorates and the division of each of the 33 Federal electorates for the State of Victoria into 2 Assembly electorates, each returning 1 Member. It would have increased the metropolitan representation at the expense of the country, with a probable consequent reduction in the numerical strength of the Country Party. However, Mr. Hollway with the support of the Labour Party could muster only 30 votes in a House of 65 Members, and it was alleged that to gain the extra support for his Motion advances were made to certain other members of the Liberal and Country Party.

Speaker, Sir Archie Michaelis goes on to say that Ellinson rang him at a later stage and said that Mr. Hollway and Sir Gordon Snow were most anxious to see him at the Hotel Windsor. Sir Archie Michaelis refused to see them. Sir Archie Michaelis states that he advised Mr. Cain of the allegation, and Mr. Cain was most emphatic in his assertion that Sir Archie Michaelis's name had never been discussed by Mr. Cain with others who were discussing the negotiations. One of the other affidavits mentions an offer to a member of this House, to obtain his support for the motion, which included the Premiership, Labour support at the next election, immunity from Labour opposition, and an amount of £5,000 to be paid into a trust account immediately, to protect the Member concerned should that immunity and support not be forthcoming. Another involves allegations of a cash offer to a member of this House by a member of a trade organisation. I have several other affidavits, which I need not read in detail, as I believe I have conveyed to the House the seriousness of the charges involved.

Mr. Norman went on to say he believed that there was unfolded in the documents a *prima facie* case of attempted corruption and of pressure upon Members of Parliament which demanded an inquiry on the highest level. There was no evidence that any of the five members of the Liberal and Country Party who voted for the no-confidence Motion did so for other than purely political reasons. The actions complained of had taken place after the five members of his party had agreed to support the Motion submitted by Mr. Hollway. It was apparently only when it was realised by the varied interests who sought success for the attempted rearrangement of control in the House that they might be short of the numbers, that more serious and questionable methods were said to have been employed in an effort to gain the necessary further recruits. The Hon. the Leader of the Opposition and Leader of the Labour Party (Hon. J. Cain) had clearly and categorically denied that the name of the Speaker had ever been mentioned in his presence, and he accepted without reserve that assurance. Mr. Norman concluded his remarks by saying that he would hand the sworn declarations to the Hon. the Premier (Hon. J. G. B. McDonald) and expressed the belief that the Premier had a responsibility to the Parliament and the people of Victoria to appoint immediately a Royal Commission to inquire into the facts outlined in the documents.

Mr. Hollway said that, concerning any of the accusations made by Mr. Norman relating to named persons and that were not of a completely vague character, he could give the lie to them immediately. He had never met Mr. Ellinson in his life. He did not know whether anybody had approached the Speaker. No such person had any authority from him to approach any one. It was a trumped-up attempt to influence the delegates at the Liberal and Country Party Conference which was to be held the following day. He regarded it with contempt and would treat the charge with derision.

Mr. Cain said that he did not wish to "buy into" the private fight in the Liberal and Country Party, but his name had been men-

tioned. He had never been inside the Hotel Windsor in the presence of the Hon. Member for Ballarat and Sir Gordon Snow, and had had nothing to do with the alleged approach to the Speaker. His Party had for good reasons supported the no-confidence Motion moved by the Hon. Member for Ballarat on the issue of redistribution of seats, and made no apology for having done so. An accusation had been made against Mr. Hollway as a Member of the House. He thought it was the duty of the Speaker to see that the matter was sifted to the bottom and that it was also the obligation of the Government to take action.

The Premier said:

I desire to inform the House that the Hon. Member for Glen Iris, the Leader of the Liberal and Country Party, did notify me prior to the meeting of the House of his intention to take the step that he took. I feel that the allegations, according to what he said, are serious enough for me to take action. I shall immediately refer the documents to the Attorney-General's Department for examination and advice. Whatever course is advised on any question of besmirching this Parliamentary institution, honourable Members can rely on the Government to adopt the proper course of action.

The Speaker said that he had signed the statutory declaration referred to by Mr. Norman setting out certain facts. The Leader of the Opposition had assured him that he had nothing to do with the matters detailed in his declaration, and he believed him. He would let the matter rest there for the present but wished to inform the House that he had found it necessary to take the action he had indicated.

The House then proceeded to the Orders of the Day.

Debate was later interrupted by Mr. Cain on a matter of privilege.[3] He considered that the accusations contained in one of the affidavits referred to by Mr. Norman earlier that day, to the effect that an offer of money had been made to a certain Member to forgo his duty as a Member of the Parliament, must be construed as a matter of privilege. It was the duty, obligation and responsibility of any Member making such a charge to follow it with a substantive Motion, and if Mr. Norman were not prepared to move the relevant Motion he would do so himself. It was within Mr. Speaker's rights to determine the matter. Mr. Speaker was a signatory to one of the statutory declarations, but that did not absolve him from his duties and responsibilities as Speaker. He was the custodian of the forms and privileges of the House. If the Speaker had asked Mr. Norman "Do you propose to follow your statement with a substantive Motion?", and Mr. Norman had said "No", the Speaker would have been compelled to say to him, "I cannot hear you further".

Mr. Cain accordingly moved—

That the allegations made this day—30th September—by the hon. Member for Glen Iris be referred immediately to a Select Committee of this House.

After the Motion had been seconded the Speaker said that Mr. Norman, when referring to the affidavits, had made a statement by leave of the House, and at that stage had not raised a question of privilege. Mr. Cain had now raised the question of privilege and it was for him to make out a *prima facie* case with which he (the Speaker) had to be satisfied, after which the House would decide what action it would take. In his opinion Mr. Cain had made out a *prima facie* case, and it was therefore for the House, not for him (the Speaker) to decide the next action.

The Premier said that the Motion submitted by Mr. Cain was the result of the action taken by Mr. Norman, who had not raised the question of privilege but had made a statement by leave. In view of the seriousness of the statement he had informed the House that he would submit the matter to the legal advisers of the Government for their advice.

Mr. Cain, interjecting, said the charge that a Member had been offered £5,000 was very serious and a matter of privilege, and that the documents should not have been transmitted to the Law Department.

The Premier, continuing, said that even if the Opposition were successful in having a Select Committee appointed, it would still be proper for the Government to appoint a Royal Commission. The Government was in no way implicated and their only desire was to protect the privileges of Members. He had acted in good faith, believing that the correct action was not the appointment of a Select Committee but to seek the advice of the Government's legal advisers. He appealed to Mr. Cain not to press his Motion at that stage. Mr. Cain interjected to say that he would agree to the adjournment of the Motion until the next day if the Premier desired to consult officers of the Law Department. The Premier replied that he thought he was acting in the proper manner. If Mr. Cain desired to know whether, in the event of the Law Department supporting his (Mr. Cain's) contention regarding the appointment of a Select Committee, he would agree to the Motion, his answer was unhesitatingly "Yes". Mr. Norman also intimated that, if the advice the Government received from its legal advisers was to the effect that a Select Committee should be appointed, he would support the Motion.

After further debate, the debate on the Motion for the appointment of a Select Committee was adjourned until the next day, and given precedence over all other business. The debate on the question before the House, which was interrupted by the passing of the matter of privilege, was then resumed.

Upon the resumption of the debate on the Motion for the appointment of the Select Committee next day (1st October),[4] Mr. Cain, supported by the Deputy Leader of the Opposition (Hon. L. W. Galvin) and the Hon. Member for Portland (Mr. Holt), suggested to Mr. Speaker that, while they did not in any way question his impar-

tiality, as one of the affidavits was in his name, he might prefer to avoid any embarrassment that might arise from ruling upon points of order, or giving a casting vote in the possible event of the numbers being equal when the question was put, by relinquishing the Chair during the debate.

The Premier said the Speaker would be adopting the correct attitude by continuing to preside over the House. The Government did not question his impartiality even if points of order should arise out of the affidavit he (the Speaker) had signed. The Speaker said he had been elected by honourable Members to preside over debates in the House. Until such time as his position was challenged he would continue to do so and to carry out his duties in an impartial, dispassionate and impersonal manner.

The Premier then advised the House that he had received a report from the Law Departments upon the affidavits. He read the report, which was as follows:

> The allegation contained in the six affidavits referred to us for advice by the Honourable the Premier discloses a *prima facie* case of serious irregularities by some Members of Parliament and certain private citizens.
>
> These irregularities, if true, constitute a serious breach of the privileges of the House. It is accordingly competent for the House to determine the method by which they should be investigated.
>
> It is perhaps hardly necessary for us to say that the nature of the allegation is such as to call for a competent and complete investigation. The allegations affect the dignity and privileges of the Parliament as well as its Members.
>
> In our opinion the investigation should take the form either of an inquiry by a Select Committee of the House or by a Royal Commission.
>
> Which of these forms the inquiry should take is a matter of policy which it is not proper for us as the law advisers of the Crown to advise upon. The selection will properly be made either by the House itself or by the responsible Ministers of the Crown.
>
> Having regard to the nature of the allegations and the circumstances in which they are made, the advantage or disadvantages of either form of inquiry are reasonably apparent, and no doubt the ultimate selection will be made after due consideration has been given to this matter.
>
> (Signed) H. A. Winneke,
> *Solicitor-General.*
> (Signed) Frank G. Menzies,
> *Crown Solicitor.*

The Cabinet, the Premier continued, felt that as the charges made were of such a serious and sinister character, only the most effective and searching investigation should be made. In view of the wide publicity which had been given to the serious charges, it was essential that the public mind must be satisfied by a competent and searching inquiry by the best available means. The great institution of Parliament must be protected. There must be no suggestion of bias or that the allegations had not been fully and competently examined. The Government was satisfied that a Select Committee was not a proper tribunal to investigate the matter and that the services of a Royal Commission were absolutely necessary. The Government had

determined to advise the Governor to appoint a Royal Commission. The terms of reference were being drafted and would be strictly confined to the allegations appearing in the affidavits handed to him by Mr. Norman. At the suggestion of His Honour the Chief Justice (Sir Edmund Herring),[5] it was proposed to appoint the Chief Justice, with Mr. Justice Gavan Duffy and Mr. Justice Russell Martin as members of the Commission.

After further debate, wherein Members opposing the Commission sought to have the affidavits laid before the House, the question for the appointment of a Select Committee was put and negatived. In the event, the affidavits did not at any time come before the House.

On 6th October, 1952, a Royal Commission was issued appointing the above-mentioned Justices. The Preamble and Terms of Reference of the Commission were as follows:

> WHEREAS a motion of no-confidence, notice of which was given in the Legislative Assembly of the Parliament of Victoria on Tuesday the sixteenth day of September one thousand nine hundred and fifty-two by the Hon. Thomas Tuke Hollway, M.L.A., was debated on Wednesday the seventeenth and Thursday the eighteenth day of September one thousand nine hundred and fifty-two upon which latter day a vote was taken on the said motion AND WHEREAS sworn declarations containing serious allegations of improper conduct in connection with the said motion of no-confidence have been made by certain Members of Parliament AND WHEREAS the Governor of our State of Victoria in the Commonwealth of Australia with the advice of the Executive Council of the said State hath deemed it expedient that a Commission should forthwith issue to inquire into and report upon the truth or falsity of such allegations by an inquiry into the following matters:
>
> 1. Was any and what sum or sums of money or other pecuniary benefit offered by any and what person or persons to any and what Member or Members of the Parliament of Victoria to influence such Member or Members in any and what manner in connection with the said motion of no-confidence. If yea, was any such person or persons authorised by any other and what person or persons to offer any such sum or sums of money or other pecuniary benefit to any and which of the said Member or Members of Parliament.
> 2. Did any and what person or persons by any and what threat or inducement attempt to influence the action of any such Member or Members of Parliament in connection with the said motion of no-confidence. If yea, was such person or persons authorised by any other and what person or persons to offer any and which of such inducements or make any and which of such threats to any and which Member or Members of Parliament.
> 3. Did any and what person or persons enter into any and what agreement or arrangement to influence by any and what means the action of any and what Member or Members of Parliament in connection with the said motion of no-confidence. If yea, were any and what steps taken pursuant to any such agreement or arrangement by any and what person or persons for the purpose of influencing or attempting to influence the action of any and what Member or Members of Parliament in connection with the said motion of no-confidence.

At the next sitting of the House, on 7th October,[6] before the House proceeded with the business of the day the Hon. Member for Dan-

denong (Mr. Dawnay-Mould) rose, and claiming privilege, moved the following Motion:

> That a Committee of Privilege comprising two Members from each of the three parties in this House be established to consider the matter of privilege relating to the personal explanation of the Honourable Member for Glen Iris made in this House on Tuesday last.

He further claimed that, in appointing the Royal Commission, the Government had usurped the functions of the House, which body alone had the right to inquire into allegations of attempts to improperly influence Members in the performance of their duty.

The Speaker pointed out that on 30th September the House had rejected the following Motion:

> That the allegations made this day—30th September—by the Honourable Member for Glen Iris be referred immediately to a Select Committee of this House.

The Speaker ruled Mr. Dawnay-Mould's Motion out of order, as it was, in his opinion, in conflict with Standing Order No. 58, which provided that "no question or amendment shall be proposed which is the same in substance as any question which during the same session has been resolved in the affirmative or negative".

On 8th October, the Premier moved the following Motion: [7]

> That leave be given to Members of the Legislative Assembly to attend, if they think fit, as witnesses before the Royal Commission appointed to inquire into certain allegations of improper conduct in respect of a motion of no-confidence moved in the Legislative Assembly on Wednesday, the seventeenth September last, and to officers of Parliament to give evidence before, and to produce such documents as may be required by, the said Royal Commission.

Mr. Hollway and Mr. Galvin asked whether it was proposed to move a similar Motion in the Legislative Council. Mr. Cain said he understood that some Members who were alleged to be responsible for taking part in the efforts to form a new Government were Members of the other House, consequently what applied in the Assembly should apply in the Council. Mr. Cain was critical also of the granting of leave to all officers to give evidence before the Commission and to produce documents. He was of the opinion that such leave should be restricted to the Clerk of the House, and that, in any case, it should not be granted until the Clerk was subpœnaed by the Commission.

The Premier replied that if it became necessary for witnesses from the Upper House to appear before the Royal Commission the Government would be prepared to submit a similar Motion in that House. In so far as the granting of leave to all officers to attend the Commission was concerned, he assumed that the Clerk would naturally be called to produce the Votes and Proceedings, and perhaps other documents. More than one officer's name had been mentioned in the affidavits and it was only fair to grant leave to those concerned to attend the Commission if they were called.

The Hon. Member for Prahran (Mr. Pettiona) asked the Speaker for an interpretation of the words "if they think fit" in the Motion. He said it appeared to him that the passing of the Motion would mean that Members were granted the power to refuse to attend the Commission, claiming Parliamentary privilege.

The Speaker said he thought a Member could not be compelled to answer questions if he felt that he should not do so. There had been occasions on which Members had attended Royal Commissions and, under Parliamentary privilege, had not answered questions.

The Premier stated that the words were inserted to protect the privileges of Hon. Members. If an Hon. Member were subpœnaed by the Royal Commission he would then make a decision whether or not he would attend and give evidence; the responsibility would be his.*

After further debate the Motion was agreed to.

The McDonald Government, being unable to get Supply† through the Legislative Council, resigned on 28th October, and the Hollway Administration,‡ supported by the Labour Party, followed. Mr. Hollway (Premier) met the House on the same day and reported that the Royal Commission had adjourned *sine die*.[8] Several Members, including the Leader of the Labour Party (Hon. John Cain) made statements, by leave. Mr. Cain, in referring to the proceedings of the Commission, said:

> Mr. Gorman (Q.C.) asked Mr. McLachlan (Clerk of the Legislative Assembly) the following question: "Could you help the legal practitioners and the lawyers: could you refer me to any authority on the point of Parliament's'

* Five of the six affidavits were proved at the first sitting of the Royal Commission on 9th October. Mr. A. J. Fraser refused to give evidence, claiming parliamentary privilege. However, his affidavit was proved at the next sitting of the Commission on the evidence of the Justice of the Peace who witnessed the document.

† Mr. Hollway's attempt to defeat the Country Party Government on a motion of no-confidence and to form an administration of his own supported by the Labour Party had failed for lack of sufficient support. Other means of forcing the resignation of the Government were then sought, and the medium of Supply was chosen. The Labour Party with Mr. Hollway's group of Liberal and Country Party Members could not command a majority in the Assembly. The situation in the Council, however, was different. Two of Mr. Hollway's group were Members of that House, and with the Labour Party Members commanded a bare majority. A Supply Bill for the months of November and December had passed the Assembly and was on 21st October before the Council. The following reasoned amendment was moved by the Hon. P. L. Coleman (Labour) to the question for the second reading, and after being ruled in order by the President was carried:

> "That all the words after 'That' be omitted with the view of inserting 'this House is of the opinion that, in view of the inequitable electoral system at present operating in this State, and of the Government being not fairly representative of the people, the Supply sought by this Bill should not be consented to at present'."

‡ The Hollway administration lasted only four days. It was commissioned on the 28th October. The Supply Bill was revived in the L.C. and passed the same day. Next day, 29th September, the Hollway administration was defeated on a no-confidence Motion moved by Mr. McDonald. Mr. Hollway sought a dissolution, was refused, and resigned on 31st October. Mr. McDonald was again commissioned to form a Ministry and at the same time granted a dissolution.

power to appoint a Commission into the duties of Parliamentary Members? Could you refer me to any book?" The witness answered: "I will seek the direction of the Commission on that question." Mr. Gorman then asked him: "I realise the debatability of the subject, but it is such a novel area that one is wandering into that counsel could hardly be expected to pick it out of a law book. Could you give counsel any reference book whereby one could investigate the problem of the Parliamentary[10] Commission inquiring into the conduct of Members of Parliament?" The witness answered: "First and foremost I would suggest the Imperial Acts Application Act 1922, which applies the Bill of Rights to Victoria. The Bill of Rights—I think it is Article 9—states that no court or other person shall inquire into the proceedings of Parliament."

That was the view that was held by a minority of this Parliament, because this Parliament did not appoint the Royal Commission, and had nothing to do with its appointment. The Royal Commission was appointed by executive act of the Government of the day. The view was put by Mr. McLachlan, with all his knowledge and experience down the years, that the appointment of a Royal Commission was not justified, and that the matter should have been dealt with in the proper place, which is in this House. If that procedure had been adopted, we would not have had all the difficulties that have arisen.

Mr. Cain went on to say that he hoped

that future Governments in similar cases will take advice from those who are best informed on these questions—the Table officers who are responsible for the smooth working of this Parliament. Their information is sound and they know the procedure; they can quote the relevant authorities.

Before the Royal Commission adjourned *sine die* on 27th October, the Chairman said:

A number of points were raised during the course of this morning's proceedings, and I think it is necessary to say something about two of them. The first one was the validity of the appointment of this Commission. That validity was challenged. The members of this Commission would like to say that they are satisfied this Commission was validly appointed, and that it was within the competence of the Executive Council to appoint a Royal Commission to inquire into the matters set out in the Commission and to report thereon. The Commission considers that the cases of McGuinness and Clough and Leahy place this question beyond doubt.

On the question of contempt of Court—on which Mr. Winneke, Mr. Voumard and Mr. Gowans addressed the Commission—the principle is that any interference with the course of the administration of justice is a contempt of Court and quite unlawful. From what Mr. Winneke has stated, it appears that Mr. Hollway has an action pending in the Supreme Court of Victoria against the proprietors and publishers of the *Age* newspaper for libel, relating to the very same matters about which this Commission is asked to inquire. The Commission was told this morning by Mr. Gorman that both Mr. Hollway and Sir Gordon Snow were issuing further writs in New South Wales relating to the same matters.

If this Commission proceeds, there will in all probability be things spoken both in the witness box and at the bar table, and perhaps written in the Commission's report that will prejudice or will be calculated to prejudice one or both of the parties to the pending actions. Under these circumstances, it seems quite impossible for this Commission to proceed with an inquiry while these actions are pending. The Commission cannot be a party to doing anything that might tend to interfere with the due course of justice and so amount to contempt of Court. Under the circumstances, the Commission proposes to adjourn this inquiry *sine die*.

The Hollway Administration was defeated on 29th October. On 31st October, Mr. McDonald was again commissioned and the Assembly was dissolved on the same day.

A general election was held on 6th December, at which the McDonald Government was defeated. A Labour Government led by the Hon. J. Cain was then formed.

The next reference in the House to the Royal Commission, which had not resumed its inquiry, was on 3rd March, 1953, the second day of meeting in the first session of the new Parliament.[11] The Premier (the Hon. J. Cain) moved the following Motion pursuant to the requirements of the regulations relating to public accounts:

That the maximum expenditure of the Royal Commission appointed to inquire into and report upon serious allegations of improper conduct in connection with a motion of no-confidence debated in the Legislative Assembly on 17th and 18th September, 1952, be fixed at £10.

He said the expenditure was not high, but it was necessary for Parliament to approve it. The amount consisted of £9 1s. for the cost of the transcript of evidence and 5s. 4d. for petty cash. The Motion would enable Members to discuss the matter if they so desired. The Motion was agreed to without debate.

On the following day, 4th March, the Hon. Member for Rainbow (the Hon. K. Dodgshun) asked the following question of the Hon. the Premier:[12]

Whether, in view of the decision of this House to limit the maximum expenditure of the Royal Commission appointed to inquire into and report upon certain allegations of improper conduct on the part of certain persons in respect of a motion of no-confidence moved in the Legislative Assembly on Wednesday, the 17th September last, and in view of the serious nature of those allegations, it is the intention of the Government to move for the appointment of a Select Committee of this House to inquire into and report upon all matters covered by the terms of reference of the Royal Commission.

To which the Premier replied—

Yesterday I submitted a motion to the House which offered every opportunity for any honourable Member to express his views about the Royal Commission on Allegations of Improper Conduct, but apparently no Member was interested. If anyone is interested today or in the future he has his right as a Member of the House and can take whatever action he wishes.

[1] Vic. Parl. Deb., Sess. 1951-52, pp. 2170-73. [2] The affidavits are printed in full in the Melbourne *Sun* newspaper of 11th and 15th October, 1952.
[3] Vic. Parl. Deb., Sess. 1951-52, pp. 2181-9. [4] *Ibid.*, pp. 2258-93.
[5] Sir Edmund Herring was also Lieutenant-Governor.
[6] Vic. Parl. Deb., Sess. 1951-52, pp. 2340-54. [7] *Ibid.*, pp. 2396-403.
[8] Vic. Parl. Deb., Sess. 1951-52, pp. 2759-71.
[9] Counsel evidently meant " Executive ". [10] Counsel evidently meant " Royal ".
[11] Vic Parl. Deb., Sess. 1952-53, p. 63. [12] *Ibid.*, p. 91.

XII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1953

By J. M. Hugo, B.A., LL.B., J.P.,

Clerk of the House of Assembly

Last Session—Tenth Parliament

Informal Opening of Parliament.—In view of the expectation of a short session prior to the general election, the opening of Parliament was informal and members of the public were not invited to attend the opening ceremony. The usual opening day luncheon arrangements were made, however.

Expedition of Public Business.—In view of the necessity for terminating the session as early as possible before the general election, notice was given on the opening day of the session of a Motion providing for—

(*a*) precedence for Government business on Tuesdays and Fridays as from the 6th sitting day,

(*b*) morning and evening sittings as from the 7th sitting day,

(*c*) Saturday sittings after the 11th sitting day; and

(*d*) suspension of the eleven o'clock rule as from the 7th sitting day for the remainder of the session.

By arrangement between the various Parties, no evening or Saturday sittings were resorted to.[1]

Amendment providing for appointment of Select Committee.—An amendment having been moved in Committee of the Whole House on the Public Safety Bill providing for the tabling of a report and the appointment of a Select Committee of both Houses to consider it, the Chairman stated that he was not prepared to accept that part of the amendment which dealt with the appointment of a Select Committee as such a Committee could only be appointed on Motion after notice.[2]

Senate amendment not accepted.—In the message informing the Senate that one of its amendments to the Wills Bill had not been agreed to, the reason advanced in the House for disagreement was given. It is suggested that in future the reasons for disagreement should be moved by a Member as proposed in the Clerk's Report for 1930-32, p. 18.

In a further message the Senate informed this House that it did not insist on its amendment.[3]

First Session—Eleventh Parliament

A. House of Assembly

Notification of Member under Suppression of Communism Act.—In my last Report[1] I mentioned that a Select Committee had been appointed for the purposes of section 5 of the above Act in respect

of Mr. Kahn, Member for Cape Western, and that as a result of the findings of the Committee and the subsequent approval of the Committee's Report, Mr. Kahn had been notified by the Minister of Justice that he ceased to be a Member. The vacancy so caused was filled by the election of Mr. B. P. Bunting.

A similar Select Committee was appointed on 6th July in respect of Mr. Bunting and on 1st September the Committee reported its findings. The Report was considered on 24th and 28th September and approved of, and on the following day Mr. Speaker announced to the House that he had been notified by the Minister of Justice, in terms of section 5 of the Act, that Mr. Bunting ceased to be a Member as from that day. The vacancy was gazetted on the 9th October.[5]

Counsel to be an Advocate.—In resolving to appoint a Select Committee in respect of Mr. Bunting the House granted him leave to be represented by counsel before the Committee, and in a subsequent private ruling Mr. Speaker held that in accordance with practice the House had intended that, unless special circumstances were shown to exist, counsel representing Mr. Bunting should be an advocate or advocates of the Supreme Court.

Introduction of legislation on matter sub judice.—After the introduction of the Medical, Dental and Pharmacy Amendment Bill Mr. Speaker's ruling was sought privately as to whether the Bill could be proceeded with in view of the fact that it provided for the registration of specialists, upon which question an appeal was then pending before the Supreme Court. Mr. Speaker held that where legislation on a matter which was *sub judice* was essential in the public interest, it could be proceeded with notwithstanding an appeal, but indicated that it might be more in conformity with Parliamentary practice if, when the Bill was proceeded with, the appeal were withdrawn. The Bill was, however, not proceeded with and lapsed on prorogation.

Public Bill amending Private Acts.—The University Laws Amendment Bill was introduced as a public measure. In a private ruling, before the introduction of the Bill, Mr. Speaker held that as the Bill sought to correct cross-references in the Private Acts for four universities and to provide for the date of incorporation of two universities, the special procedure prescribed for private Bills need not be followed as the Bill would not affect any existing rights detrimentally.

Minister not being a Member has no seat in either House.[7]—Dr. van Rhyn resigned as Administrator of South-West Africa to become Minister of Mines and of Health as from 8th September. Until his election as a Member on the 4th November, he was (under sections 51, 52 and 55 of the South Africa Act) unable to take a seat in either house. During the period in question other Ministers handled the work of his portfolios in Parliament.

Changes in form of Appropriation Bills and of Estimates of Expenditure.—In my last Report[8] I referred to certain resolutions adopted

by the Select Committees on Public Accounts and on Railways and Harbours which laid down that no change in the form of appropriation bills and material changes in the form of the Estimates should be introduced without the proposals having been submitted to and approved by the Select Committees on Public Accounts and on Railways and Harbours, respectively, and I pointed out that, notwithstanding these resolutions, in the Railways and Harbours Appropriation Bill of 1952, Clause 3 was introduced in an amended form authorising the Minister of Transport to utilise savings on any of the sub-heads set out in the First and Second Schedules for expenditure on an item or sub-head specified under the same head in the Estimates of Expenditure but against which no moneys had been appropriated.

The matter formed the subject of further enquiry by the Select Committee on Railways and Harbours, 1953 (second session) and the Committee, as in its report for the previous year, again 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 experienced by the Railway Administration while at the same time maintaining the principles of maximum Parliamentary control over expenditure. In view, however, of the terms of section 3 of the Railways and Harbours Appropriation Act, 1952, referred to above, the Committee felt that it could take the matter no further. The General Manager, in evidence before the Committee, stated that the matter would be pursued during the recess in discussions between himself and the Controller and Auditor-General, and the Committee agreed with this proposed course of action. The Minister of Transport, in moving the Second Reading of the Railways and Harbours Appropriation Bill, 1953, also referred to this matter, and stated that although section 3 was being retained in the Appropriation Bill in the form adopted in 1952 it was to be understood that its retention did not constitute a precedent for the future.[9]

In view of the undertakings given by both the Minister of Transport and the General Manager of Railways it is hoped that a satisfactory solution to the problem will be arrived at in due course.

Legislation affecting Powers of Provincial Councils.—Paragraph (iii) of section 85 of the South Africa Act gives a provincial council power to legislate in regard to—

> Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides.

Act No. 45 of 1934 provides that Parliament shall not abridge the powers conferred on provincial councils under section 85 except by petition to Parliament by the provincial council concerned.

The Bantu Education Bill which was passed during the session provided for the transfer of native education from the provinces to the Union Government. During the debate on the Second Reading

of the Bill, Mr. Speaker was asked whether the House was competent to proceed with the Bill while Parliament had not been petitioned as provided by Act No. 45 of 1934. Mr. Speaker pointed out that Parliament had the power to pass any legislation on the subject that it thought fit.[10]

Discussion of decisions of courts of law.—During the Second Reading debate on the Reservation of Separate Amenities Bill Mr. Speaker referred to a ruling given by Mr. Speaker Jansen in 1935 in which he quoted from Todd's *Parliamentary Government in England* the following passage:

> Nothing could be more injurious to the administration of justice than that the House of Commons should take upon itself the duties of a court of review of the proceedings of an ordinary court of law.[11]

Mr. Speaker then indicated that when discussing legislation to vary the consequences of a decision of the Courts, Members could freely discuss such consequences, but should not question the correctness in law of the decision.[12]

These remarks made by Mr. Speaker *for the guidance of the House* did not, however, lay down any fixed and rigid rule prohibiting Members under all circumstances from discussing the correctness or otherwise of a judicial decision. Having quoted from Mr. Speaker Jansen's ruling of 1935, which contemplated special circumstances when the discussion of a particular judicial decision would be allowable, Mr. Speaker also had in mind that there might be such special circumstances.

While it would undoubtedly be injurious to the proper administration of justice to have, in the course of general debates in the House, attacks upon the correctness in law of a judicial decision, there might conceivably be introduced in the House a Motion or Bill which in Mr. Speaker's opinion brings a particular judicial decision before the House in such a direct and definite manner that it would be proper and relevant to allow such a decision to be discussed. In addition, on a Bill involving the law of Parliament, Members have been allowed to debate and question the correctness of a judicial decision, as was done during the debates on the Separate Representation of Voters Bill in 1951 and the High Court of Parliament Bill in 1952.[13]

In conclusion it may be added that in no circumstances is it possible to reflect upon the conduct of a judge unless the debate is based on a substantive Motion dealing with his conduct.

B. Joint Sittings of both Houses

Two Joint Sittings in same Session.—During the session the Governor-General by Message convened a Joint Sitting of both Houses of Parliament to consider the South Africa Act Amendment Bill.[14]

Some time after the First Joint Sitting had completed its business the Governor-General, by a similar Message, convened a Second Joint Sitting to consider the Separate Representation of Voters Act Validation and Amendment Bill.[15]

Bills considered not of same substance.—The rule that the same question may not be twice offered during the same session did not apply as the Bill introduced at the Second Joint Sitting was not a Bill of the same substance as the Bill which did not obtain a two-thirds majority at the First Joint Sitting.

Competency of South-West Africa Senators and Members to sit in Joint Sitting.[16]—At the first meeting of the First Joint Sitting Mr. Speaker was asked whether it was competent for Senators and Members representing the Territory of South-West Africa to participate in the proceedings of the Joint Sitting.

Mr. Speaker, in upholding their competency so to participate, pointed out that the Senators and Members in question were, by the South-West Africa Affairs Amendment Act, 1949, nominated or elected in addition to, and given all the rights, powers, privileges and immunities of, Senators and Members nominated or elected under the South Africa Act.

The same point was raised at the first meeting of the Second Joint Sitting.[17]

Rules for Joint Sittings.—The rules which were laid upon the Table by Mr. Speaker and adopted by the Joint Sittings, followed closely the rules adopted by the Joint Sitting of 1936 except that in the rules for the Second Joint Sitting provision was made in para. (1) to enable a Minister without notice to make a Motion relating to the business of the Joint Sitting, such Motion being decided without amendment or debate.[18]

New Members sworn in.[19]—Dr. L. S. Steenkamp was elected a Senator during an adjournment of the Senate for the Joint Sitting, and on 17th July the Senate met at 10 o'clock a.m. prior to the meeting of the Joint Sitting to enable him to take the oath. Similarly, during an adjournment of the House of Assembly for the Joint Sitting, Mr. Davidoff was elected a Member of the House of Assembly and on 16th July, when the Joint Sitting resumed business after the luncheon hour break, the oath was administered to him by Mr. Speaker.[20]

Death of a Member.[19]—On the 20th July Mr. Speaker announced to the Joint Sitting that a vacancy had occurred in the House of Assembly owing to the death of Dr. Bremer. A Motion of condolence was adopted by the Joint Sitting, and, as a mark of respect, the Joint Sitting adjourned at nine minutes past 11 o'clock a.m.[21]

Several stages of Bill taken at same sitting.—On Friday, 2nd October, the Motion for leave to introduce the Separate Representation of Voters Act Validation and Amendment Bill and the First Reading of the Bill having been agreed to, the Prime Minister moved,

as an unopposed Motion, that the Second Reading be taken forthwith. There being no objection, the Prime Minister then moved:

> That the Order for the Second Reading be discharged and that the subject of the Bill be referred to a Select Committee for inquiry and report, the Committee to have power to take evidence and call for papers and to have leave to bring up an amended Bill.

This Motion was, after discussion, agreed to, and when on a further Motion by the Prime Minister the personnel of the Committee had been appointed, the Joint Sitting suspended business for one hour to enable the Joint Select Committee to hold a meeting.

The Committee held a meeting forthwith and when the Joint Sitting resumed business, the Committee's Report was considered and adopted.[22]

Address to Governor-General.—(1) in accordance with paragraph 6 of the Rules of the First Joint Sitting, an address was presented to the Governor-General informing him that the South Africa Act Amendment Bill had failed to obtain the requisite two-thirds majority.[23]

(2) As the Second Joint Sitting adopted the Report of the Joint Select Committee on the subject of the Separate Representation of Voters Act Validation and Amendment Bill recommending the appointment of a Commission[24] to proceed with the Committee's enquiry during the recess, it was not considered necessary to present an address to the Governor-General acquainting him with the result of the Second Joint sitting.[25]

[1] V. & P., p. 17. [2] *Ibid.*, p. 119. [3] *Ibid.*, p. 145.
[4] *See* JOURNAL, Vol. XXI, 104-5. [5] V. & P., pp. 17, 238, 360, 378 and 381. and S.C. 10—'53.
[7] *See* JOURNAL, Vol. XX, 161. [8] *See* JOURNAL, Vol. XXI, 170.
[9] 82 *Assem. Hans.*, 2482-3. [10] 83 *Assem. Hans.*, 3656.
[11] V. & P., 1935, p. 461. [12] V. & P., 1953, p. 197.
[13] *See* JOURNAL, Vol. XX, 154-5; Vol. XXI, 102-3.
[14] 1st J. S. Minutes, p. 1. [15] 2nd J.S. Minutes, p. 1.
[16] *See* JOURNAL, Vol. XVIII, 95. [17] 1st J.S. Minutes, pp. 1-2; *Deb.*, 1st J.S., cc. 2-9, and 2nd J.S., c. 2. [18] 2nd J.S. Minutes, p. 3.
[19] *See* JOURNAL, Vol. V, 85. [20] Senate Minutes, p. 11; 1st J. S. Minutes, p. 12.
[21] 1st J.S. Minutes, p. 29. [22] 2nd J.S. Minutes, pp. 5-8.
[23] 1st J.S. Minutes, p. 33. [24] A notice of the appointment of the Commission was published in a Government Gazette Extraordinary (No. 5165) on 16th October. [25] 2nd J.S. Minutes, pp. 9-10.

XIII. RECOMMENDATION AND ASSENT TO LEGISLATION OF THE COUNCIL OF THE PROVINCE OF THE CAPE OF GOOD HOPE

BY K. W. SCHREVE,
Clerk of the Provincial Council

The following precedent of the passing of a legislative provision involving State funds, subject to recommendation, and assent to a provision of a provincial measure being withheld, is recorded in the Minutes of 1952 and 1953 of the Council of the Province of the Cape of Good Hope. It should, however, be premised that the passing of a financial ordinance by the Council of a Province of the Union of South Africa is governed, *inter alia*, by the following provision in the South Africa Act, 1909:

(*S. 89 (1)*)

A provincial revenue fund shall be formed in every province, into which shall be paid all revenues raised by or accruing to the provincial council and all moneys paid over by the Governor-General-in-Council to the provincial council. Such fund shall be appropriated by the provincial council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General-in-Council for particular purposes, then for such purposes, but no such ordinance shall be passed by the provincial council unless the administrator shall have first recommended to the council to make provision for the specific service for which the appropriation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the administrator: Provided that, until the expiration of one month after the first meeting of the provincial council, the administrator may expend such moneys as may be necessary for the services of the province.

And, more particularly in the Cape Province, the Council's Rules of Procedure lay down—

(*Rule 77*)

The Council shall not proceed upon any motion, address, or Draft Ordinance for the appropriation of any part of the Provincial Revenue Fund, or authorising the making or raising of any loan, nor upon any proposal to raise funds by way of taxation, unless introduced by the Administrator or recommended by him during the Session in which such proposal is made. Such recommendation may be communicated by written message through the Chairman or verbally by the Administrator or other member of the Executive Committee.

(*Rule 78*)

Where any proposal for an increase of expenditure or a tax is only incidentally involved in a Draft Ordinance not introduced by the Administrator in person, his recommendation may be given at any time before the consideration of the clause or clauses proposing such expenditure or taxation, and such clause or clauses shall not be put to the Committee of the Whole Council on the Draft Ordinance before such recommendation has been conveyed to the Council.

At the sitting of the Council of the Cape of Good Hope,[1] on 12th June, 1952, when the order for the Committee stage of a Draft

Ordinance "to amend the law relating to education" had been read, a Motion was moved by the Hon. Member for Albany—

That the Committee of the Whole Council on the *Education Amendment Draft Ordinance* have leave to consider the desirability of extending the provisions of the Draft Ordinance so as to prevent the extension of the compulsory language medium provisions of the principal ordinance to the secondary area.*

whereupon the Hon. Member for Humansdorp asked the Chairman's ruling whether the Motion was in order in view of the provisions of Rule 119 which reads:

Amendments may be made to a clause, or new clauses added, provided the same be relevant to the subject matter of the Draft Ordinance, or pursuant to any instructions, or be otherwise in conformity with the Rules of the Council; but if any amendment be adopted which is not within the title of such Draft Ordinance, the Committee shall amend the title accordingly and report the same specially to the Council: provided, however, that no clause or amendment can be proposed which is in conflict with the principle of the Draft Ordinance as read a second time.

After discussion, the Chairman of the Council ruled: [1]

In considering the nature of the instruction proposed, I feel that cognisance must be taken of the intended new Clause to follow Clause 42 appearing on the Order Paper, because it is an indication of the subject-matter of the motion by the hon. Member for Albany.

According to *Parliamentary Procedure in South Africa*, by Ralph Kilpin,[2] "amendments which although relevant to the subject-matter introduce new and important principles not contemplated by the Bill as read a Second Time, or which extend the scope of the Bill to cognate subjects or wider areas" may be moved only after an instruction from the House.

This Council has its precedents on the point. I need only refer to the instances in the Council[3] on the 8th June, 1951, when in respect of two Draft Ordinances instructions were sought and agreed to which created a departure from the Draft Ordinances as read a Second Time.

Further, the Speaker in the House of Assembly[4] on the 7th June, 1920, referring to a proposed new Clause in a Bill, stated in his ruling that it is "in conflict with the principle of the Bill as read a Second Time. Being, however, not irrelevant to the subject-matter of the Bill, it can be incorporated therein, and the Title amended accordingly, provided special leave is given by the House."

In his argument the hon. Member for Humansdorp has relied on the terms of Rule 119 and particularly on those of the proviso.

What I now have to decide is whether the proposed instruction relating to the subject-matter of the intended amendment of the Draft Ordinance falls within the terms of Rule 119.

The Long and the Short Titles of the Draft Ordinance now before the Council read to the effect that the Draft Ordinance seeks to amend the law relating to education, which is an indication that various amendments of the main Ordinance are contemplated. Hon. Members have, however, not attached

* *South Africa Act*, 1909, s. 137, reads:
Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages.

much importance to the provisions of Clause 45, which speaks of the media of language instruction of student teachers in non-European training schools.

I have come to the conclusion that the motion and the intended amendment are not conflicting with Rules 117* and 119 and the motion by the hon. Member for Albany is therefore in order.

The Motion for the instruction to the Committee was thereupon (on division, Ayes—21, Noes—18) agreed to.[5]

At the Committee stage[5] the Hon. Member for Albany then moved a new clause embodying the principle indicated in the instruction to the Committee. His Honour the Administrator thereupon asked the Chairman's ruling whether the proposed new clause was in order in view of the fact that its adoption would result in increased expenditure and that it had not been recommended by him in terms of Rule 77 or 78. Progress was thereupon reported and on 13th June, at the resumption of the Committee stage,[6] the Chairman of Committees ruled:

I have carefully listened to the arguments advanced by hon. Members and again would like to thank His Honour the Administrator for the explanation he has offered. I have, of course, also studied the wording of the intended new Clause in relation to the principal Ordinance as well as references to authorities on the point of order raised.

It seems to me that some hon. Members have interpreted Rule 78 as applying to incidental expenditure rather than to a proposal incidentally to be contained in the Draft Ordinance.

The word "incidentally" in Rule 78 clearly refers to the words "any proposal"; and the words "such ordinance" in section 89 of the South Africa Act refer to the Appropriation Ordinance.

From what has been said and from the reference to the proposed provision in the law, I am now satisfied that there is nothing in the intended new Clause which can in any manner be construed as appropriating any part of the Provincial Revenue Fund or as constituting a new and distinct charge on public revenue, which is the essence of Rule 77 and section 89 (1) of the South Africa Act.

If Rules 77 and 78, based on section 89 (1) of the South Africa Act, had to be interpreted so narrowly as to include hypothetical expenditure which might be incurred in the carrying out of a public service, an impossible position could be created by an Administrator if he were to withhold the required recommendation.

From the explanation given by His Honour the Administrator it is clear that the expenditure, if any, which he visualised is hypothetical, and I must repeat that in my opinion there is nothing in the proposed Clause which in any manner can be construed as appropriating any part of the Provincial Revenue Fund or as constituting a new and distinct charge on public revenue. The proposed Clause is therefore allowed.

The proposed new clause was thereupon (on division, Ayes—15, Noes—13) agreed to, but when it was put at the Report stage[7] of the Draft Ordinance, His Honour the Administrator asked the Chair's ruling whether the proposed new Clause could now be put in view

* Rule 117 reads:

On the Order of the Day being read for the Council to go into Committee on a Draft Ordinance, and at any time afterwards while such Draft Ordinance is in Committee, an instruction to the Committee may be moved without notice.

of the fact that he had not given his recommendation as required by Rule 78. He stated and laid upon the Table a statement giving an example to show that if the proposed new Clause, limiting the compulsory language medium in schools to the primary area, were adopted it would involve the Administration in increased expenditure.

The Chairman of the Council ruled: [8]

> I have studied the ruling of the Chairman of Committees as given this morning in connection with the Clause now in question, and am in agreement with his interpretation and finding.
>
> I have nothing to add except to say this: The fact that the Administrator may for cogent reasons withhold his recommendation to the Council to make provision for the specific service now contemplated by the Clause, or even withhold his warrant, cannot in my opinion affect the interpretation of the Rules.
>
> I therefore proceed to put the Clause.

The new clause 43 was thereupon agreed to.

After the Draft Ordinance as amended had been passed[8] by the Council, it was transmitted to the Governor-General-in-Council for his assent in accordance with *s.* 90 and *s.* 91 of the South Africa Act, 1909, which lay down:

(*S. 90*)

> When a proposed ordinance has been passed by a provincial Council it shall be presented by the administrator to the Governor-General-in-Council for his assent. The Governor-General-in-Council shall declare within one month from the presentation to him of the proposed ordinance that he assents thereto, or that he withholds assent, or that he reserves the proposed ordinance for further consideration. A proposed ordinance so reserved shall not have any force unless and until within one year from the day on which it was presented to the Governor-General-in-Council, he makes known by proclamation that it has received his assent.

(*S. 91*)

> An ordinance assented to by the Governor-General-in-Council and promulgated by the administrator shall, subject to the provisions of this Act, have the force of law within the province. The administrator shall cause two fair copies of every such ordinance, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of such ordinance, and in case of conflict between the two copies thus deposited, that signed by the Governor-General shall prevail.

The Ordinance (No. 16 of 1952) was promulgated in the *Cape Provincial Official Gazette* (No. 2609, dated 19th September, 1952) *without* the text of section 43 but with a note that His Excellency the Governor-General-in-Council had assented to the Ordinance with the exception of section 43 to which assent was withheld. When an announcement to the same effect was made by His Honour the Administrator in the Council[9] on 24th February, 1953, the Hon. Member for Wynberg tabled the following notice of question: [10]

(1) Under what specific provision of the South Africa Act did the Governor-General-in-Council refuse assent to the Education Ordinance No. 16/1952 as constitutionally passed by this Council on 13th June, 1952;

(2) whether the Governor-General-in-Council advised the Administrator that he was withholding his consent; and if so, on what date; and

(3) what steps were taken by the Administrator to persuade the Governor-General-in-Council to assent to the Ordinance as passed by the Council?

The following reply[11] was given by His Honour the Administrator in the Council on 27th February, 1953:

(1) I am not aware that His Excellency the Governor-General-in-Council refused assent to the Education Amendment Ordinance No. 16 of 1952. To my knowledge he refused assent only to section 43, which was invalidly inserted in the Ordinance. As there is under the constitution no obligation on the Governor-General-in-Council to advise me under which provisions of the law he had acted, I am unfortunately unable to supply the required information.

(2) It is not clear whether the hon. Member wants to know whether the Governor-General-in-Council first advised me that he intends withholding consent. No such advice was sent to me. However, on 11th August, 1952, the Administration was informed that the Education Amendment Ordinance, 1952, had been assented to by His Excellency the Governor-General, with the exception of section 43, to which assent was withheld.

(3) When once the Governor-General-in-Council has given or withheld his assent, he is *functus officio*, and no amount of persuasion could affect the position, as he could not validly alter his decision once it has been given.

[1] 1952 MIN. 96. [2] 2nd ed., p. 11. [3] 1951 MIN. 81, 82. [4] 1920 VOTES, 540. [5] 1952 MIN. 97. [6] *Ibid.*, 100-1. [7] *Ibid.*, 102. [8] *Ibid.*, 103. [9] 1953 MIN. 6. [10] *Ibid.*, 7. [11] *Ibid.*, 27.

XIV. CONFERENCE OF PRESIDING OFFICERS AND SECRETARIES OF LEGISLATIVE BODIES IN INDIA

BY M. N. KAUL, M.A.(CANTAB.),

Secretary of the Lok Sabha

1. Presiding Officers' Conference

The Conference of Presiding Officers of Legislative Bodies in India was held in Gwalior (capital of Madhya Bharat State) on 24th, 25th and 26th October under the chairmanship of Mr. G. V. Mavalankar, Speaker of the House of the People.

The Conference held its first session in September, 1921, under the chairmanship of Mr. A. F. Whyte, the then Presiding Officer of the Central Legislative Assembly. The principal idea of organising such a Conference was co-ordination of work by and common education of all the presiding officers in India, principally in all pro-

cedural matters, in dealing with the various subjects coming before the legislature within the scope of their jurisdiction. In the beginning, the Conference did not meet annually, but in 1946, when the present Speaker, Mr. G. V. Mavalankar, was elected to the Chair at the Central Assembly, it was decided to hold the Conference annually, though it was not possible to do so in 1948 and 1952. The Conference had a special session of one day on 10th April, 1949, when it was unanimously resolved that the independence of the Legislature through an independent Secretariat must be secured by a special provision in the Constitution. In view of this resolution of the Conference, Articles 98 and 187 were inserted in the Constitution for securing provisions for separate Secretarial Staff of the Legislature.

Added importance was attached to the Conference held this year, as it was the first Conference after the general elections in India, and as it afforded opportunity for exchanging views on the working of the new Legislature and Parliament during the last one and a half years. It was the first time when Speakers of Part "C" States also took part in the deliberations. The President of the Jammu and Kashmir Constituent Assembly also attended the meeting.

Mr. Mavalankar, in his address to the Conference, said that unless Parliament was in a position to assert its independence as against the executive, there could be no hope of real democracy or Parliamentary Government. He further said:

> The political life has yet to be organised and based solely on programmes, and it will take a long time before conditions settle down and political life reaches the level as in England or in other countries of the West. The independence of the Speaker and Legislative Secretaries is, therefore, a matter very vital and essential not only for a proper discussion, freedom of speech and free expression of opinion, but for the very existence of the legislatures as really democratic bodies and not merely handmaids of the executive.

Referring to taxation by Government, he said it was necessary in the interest of the Government itself as representative of the people and exercising taxation powers for the popular benefit, to submit to as large a control by the legislature as could be imposed or allowed.

Referring to the Constitution, he said:

> I prefer a change by healthy convention rather than by specific written provisions, whether embodied in the Constitution, or otherwise. This does not mean that I undervalue the importance of the written word. It is necessary, but it has got the drawback of being rather rigid and unresponsive to a willing and progressive change suitable to the changing conditions.

Among the important subjects discussed were:

(i) Consideration of the proposal to organise an Inter-Legislature Association.

(ii) The necessity of an independent Legislature Secretariat.

(iii) Propriety of the selection of a Minister who is not a member of the Legislative Council as the Leader of the House.

(iv) Right of the Deputy Speaker, as ordinary member, to participate in the debates and attack or criticise the Government and take part in Divisions of the House.

(v) Formation and functions of Financial Committees.

(vi) Steps to be taken to compile and maintain an up-to-date glossary of administrative, constitutional, Parliamentary and legal terms in " Hindi ".

The Conference took decisions or made recommendations on several important questions. The Conference agreed to the formation of an Inter-Legislature Association which would facilitate informal exchange of views between Members of the various Legislatures on questions of all-India importance which come up before the Legislatures.

The Conference was of the view that in addition to the provision in Articles 98 and 187 of the Constitution for separate Secretariats for Legislatures, these Secretariats should also be independent and free from the control of the Executive Government.

As regards the question of language, the Conference had decided in 1949 that there should be uniformity of terminology in the various Legislatures of India. The Conference now felt the necessity of a glossary of administrative, constitutional, parliamentary and legal terms in Hindi which should be so framed that the words would be easily understandable to the people in general.

The Conference was of opinion that there should be growth of a convention that Speakers and Chairmen should not actively participate in politics and controversial matters. It was also of the opinion that in the interest of development of free democratic institutions in the country a convention should be established to the effect that the seat from which they stood for re-election should not be contested.

The Conference discussed the question as to whether it was proper to appoint a Minister from the Lower House to be the Leader of the Upper House. It may be stated in this connection that under our Constitution a Minister who is not a Member of the House can take part in the proceedings but cannot vote. The Conference generally favoured the appointment of a Minister who is a Member of the House as the Leader of the House. It was felt that the Leader being the representative of the Chief Minister, it should be left to his discretion as to whether such a Minister should be appointed out of the Members of the Upper House or the Lower House.

As regards the right of the Deputy Speaker or the Deputy Chairman to participate in the proceedings of the House, the general feeling in the Conference was that they had greater freedom, but as they had to preside in the Legislature, a responsibility lay on them to so conduct themselves in the House as to avoid criticism of rival parties.

The necessity and importance of Financial Committees in the present democratic set-up of the country was accepted. The Chairman explained that at the Centre, after the coming into force of the

Constitution, rules of the House were so framed as to constitute these Committees under the control of the Speaker and not under any Minister, as it obtained before the Constitution.

2. Secretaries' Conference

Secretaries of the various legislatures in India also held an informal meeting on 23rd October, under the Chairmanship of Mr. M. N. Kaul, Secretary to the House of the People. This was in response to a resolution passed unanimously in the Conference of the Presiding Officers held in 1950, with a view—

(1) to discuss administrative, procedural and other matters at Secretary-level;

(2) to bring about uniformity of organisation in Legislature Secretariats throughout India;

(3) to consider and to report on any matters referred to by the Conference of the Presiding Officers; and

(4) to recommend to the Conference of the Presiding Officers any points which require their consideration.

Mr. Kaul, in his presidential address, said:

We as Secretaries of the various Legislatures have to fulfil a task which is both exacting and important. . . . If the institutions which we serve do not exactly fulfil their obligations or we do not see them functioning more perfectly, it should be our constant endeavour, in so far as it lies within our power, to suggest improvements. . . . All the Legislatures in this country could be said to constitute one Grand Parliament of the country. . . . The mere fact that it is split up in the various States is only for administrative and organisational convenience. We have to see that each part of this Grand Parliament functions effectively. We have to see that there is uniformity of procedure, organisation and administration of these various parts.

Mr. Kaul also emphasised the need for manning the legislature Secretariat with competent, trained and efficient staff.

I regard this as of the highest importance (said Mr. Kaul) because on this depends the working of the institutions and their progress and efficiency and consequent growth of democracy. . . . At present, the tendency in some places is to consider Parliamentary staff as being relatively unimportant or to place difficulties in their way. We have to see that this situation is remedied. The first and foremost requisite is that the Parliamentary staff should be independent of political influences and that they should not, in their day-to-day work, be deterred by personal, political or sectional influences. There should be a sound code of discipline and conduct. The singleness of purpose should be to serve the Members of all shades of opinion and thought with the same devotion.

The second requisite is that persons of calibre and sound education should be appointed to the Parliamentary posts. Selection should invariably be made by public examination, and a course of training should be given. During the initial stages of a man's career a careful watch should be kept over him, so that, if he is not likely to prove a suitable Parliamentary officer, he is removed at an early stage. This will ensure that none but able men are on the rolls of Parliamentary staff.

Among the subjects referred to at the Conference was one on the need of Indian Universities providing a course of studies in Parlia-

mentary procedure similar to that at Oxford and Cambridge. Want of facilities for "training" personnel to man the legislature Secretariats had been keenly felt.

Administrative problems and setting up of legislature Secretariats with special emphasis on their freedom from all executive control save that of the Presiding Officer of the legislature was also discussed. Legislature Secretariats, it was pointed out, had been made independent in several States, while the process was still incomplete in the others.

The advisability of bringing out a journal for discussion of common problems was also considered, as also the steps to be taken to achieve uniformity in procedure of various legislative bodies.

XV. THE CREATION AND INAUGURATION OF THE STATE OF ANDHRA

By S. L. Shakdher,
Joint Secretary, Lok Sabha Secretariat

On 19th December, 1952, the Prime Minister made an announcement in the House of the People[1] that the Government of India had decided to establish an Andhra State consisting of the Telugu-speaking areas of the present Madras State excluding the city of Madras, and that they proposed taking early steps towards this end in accordance with Article 3 of the Constitution of India. In pursuance of that decision, Mr. Justice K. N. Wanchoo, Chief Justice of Rajasthan High Court, was appointed to consider and report on the financial and other obligations involved in this decision as also on the questions to be considered in implementing it.

Mr. Justice Wanchoo submitted his report[2] to the Government of India on 7th February, 1953. After the Government had considered the report the Prime Minister made a statement in the House of the People on 25th March[3] to the effect that the proposed Andhra State was to consist of what might be called the undisputed Telugu-speaking areas of the then Madras State and that after the formation of the new State a Boundary Commission or Commissions would be appointed to determine its exact boundaries and that in the meantime the State was to be constituted as early as possible, on the basis of the existing boundaries of the Districts which were to comprise it.

The Prime Minister also stated that the Legislature of the Andhra State would consist of one Chamber only (the Legislative Assembly) and there would be no second Chamber; as regards the residuary State of Madras, it was to be left to that State to decide the future of its second Chamber. The Members who had been elected to the

existing Madras Legislative Assembly from the areas which would form part of the new Andhra State would constitute, to begin with, the new Andhra State Legislative Assembly.

As one of the Districts, *viz.*, Bellary, was bi-lingual and could not be treated as a single unit for attachment to any State, certain taluks of that district which were predominantly Telugu-speaking were included in the Andhra State. With respect to the Bellary taluk in particular, Mr. Justice L. S. Misra, Chief Justice of the Hyderabad High Court, was appointed to report on its future; his report[4] made the recommendation (which was subsequently adopted) that the Bellary taluk be incorporated in the State of Mysore.

The Andhra State Bill, 1953, "to provide for the formation of the State of Andhra, the increasing of the area of the State of Mysore and the diminishing of the area of the State of Madras, and for matters connected therewith", was introduced in the House of the People on 10th August by the Minister for Home Affairs.[5]

In pursuance of the provisions of Article 3 of the Constitution of India the views of the Madras and the Mysore State Legislatures were also ascertained by the Government on the provisions of the Bill as originally drafted. The House of the People passed the Bill on 27th August.[6] The Bill as passed was laid in the Council of States on 27th August and was passed by the Council on 12th September.[7] The Bill was assented to by the President of the Republic on 14th September.[8] The Act[9] came into force on 1st October, 1953.

The Prime Minister, Mr. Nehru, inaugurated the new Andhra State at Kurnool on 1st October.

The first session of the Andhra Legislative Assembly commenced on 23rd November in Kurnool. On the opening day Shri N. Venkataramiah, supported by the Ministerial party, was elected Speaker of the Assembly. On 24th November, Shri P. Suryachandra Rao, an Opposition candidate, was elected Deputy Speaker.

The number of elected Members in the Andhra State Assembly is 140. Consequential changes in the number of Members in the Legislative Assemblies of Madras and Mysore have also been made. The strength of the Madras Legislative Assembly has been reduced from 375 to 230, and the Mysore Legislative Assembly has been increased from 99 to 104. In the House of the People the State of Andhra has been allotted 28 seats.

The temporary capital of the State is located at Kurnool. But this issue is to be finally decided by the Legislative Assembly of Andhra.

[1] H.P. Deb., Part I, 19.12.52, cc. 1864-6. [2] Lok Sabha Library—No. IV C.C. (149). [3] H.P. Deb., Part II, 25.3.53, cc. 2803-8. [4] Lok Sabha Library—No. IV C.C. (151). [5] H.P. Deb., Part II, 10.8.53, c. 448. [6] *Ibid.*, 27.8.53, c. 1732. [7] C.S. Deb., 12.9.53, Vol. IV, c. 2142. [8] *Gazette of India*, Part I, s. 2, 14.9.53. [9] No. 30 of 1953.

XVI. THE FEDERATION OF THE RHODESIAS AND NYASALAND[1]

By E. Grant-Dalton, M.A.,
Clerk-Assistant of the Federal Assembly

After the change of Government in the United Kingdom towards the end of 1951, a statement was made in Parliament on 21st November, 1951,[2] that His Majesty's Government were in full agreement with the Victoria Falls Communiqué,[3] and that they favoured a scheme of federation on the general lines recommended in the Officials' report.

In January, 1952, the Prime Minister of Southern Rhodesia and the Governors of Northern Rhodesia and Nyasaland visited London for informal talks with His Majesty's Government, in order to prepare an agenda for a plenary conference between the governments concerned.

After these talks, it was announced that the conference would be reconvened in London to formulate a draft scheme of federation. It was announced in the House of Commons on 4th March, 1952, that the detailed scheme to be prepared at the April Conference would be published and that Her Majesty's Government proposed to convene a further conference, to be held later in 1952, to consider the detailed scheme before the question of ratification or abandonment was finally put to the Governments concerned.

The reconvened Conference met on 23rd April, 1952, under the joint chairmanship of the Most Honourable the Marquess of Salisbury (Secretary of State for Commonwealth Relations) and the Right Honourable Oliver Lyttelton, M.P. (Secretary of State for the Colonies). The Secretary of State for the Colonies had invited African representatives from Northern Rhodesia and Nyasaland to take part in the Conference, but although these representatives came to London, they refused to attend the Conference even as observers. The Southern Rhodesian delegation included two Africans, who attended the Conference and took an active part in the proceedings.

This Conference published a "Draft Federal Scheme"[4] which was set out in such a manner that a constitution could, if necessary, be drafted on it. This scheme marked a big advance on that proposed by the 1951 "Officials'" conference, described in Volume XX of the JOURNAL. It proposed a true Federation on the Australian model, and listed a number of subjects on which only the Federal Legislature could make laws; and also specified a number of other subjects with which both the Federal Legislature and the Territorial Legislatures could deal, providing that in cases of inconsistency the Federal Law was to prevail. To make the Constitution somewhat less rigid, it also allowed the Federal Legislature to delegate power to legislate on Federal subjects to the Territorial Legislatures and

(within certain defined spheres) allowed the Territorial Legislatures to delegate powers to the Federal Legislature. All subjects not specifically allotted to the Federal Legislature remained the responsibility of the Territories, and care was taken to ensure that the Territorial Legislatures retained control of those matters which most closely concern the daily life of the African population.

Apart from some additions and alterations to the Federal and Concurrent lists, no changes were made in the above proposals at the final London Conference in January, 1953.

It was recommended that the Federal Assembly should consist of 35 Members, of whom 17 were to be from Southern Rhodesia, 11 from Northern Rhodesia and 7 from Nyasaland. Of these 35 Members, 33 were to be elected, a very great advance on the original proposals. As part of its quota of Members, each Territory was to return one European and two Africans to represent African interests. The Northern Rhodesian and the Nyasaland European Member for African interests were to be nominated. The composition of the Legislature was not changed in the final proposals.[5]

It was also proposed that the Federal Assembly should elect a Speaker, either from among its own Members or from outside, but that if a Member of the Assembly was elected as Speaker he was thereupon to vacate his seat. This proposal was adopted in the final scheme.[5] It resembles a provision in the Constitution of Southern Rhodesia, except that there the Speaker, if a Member on election, does not have to resign his seat.

It was also proposed that the life of the Assembly should, unless it was dissolved earlier, be 5 years. The proposals relating to voting in the Federal Assembly and assent to Bills followed closely the practice in other Parliaments. None of these provisions was altered in the final scheme.

The draft scheme provided that Her Majesty was to be represented in the Federation by a Governor-General, who would have power to appoint a Prime Minister and other Ministers and assign appropriate departments to them. It laid down that, except in certain instances where the Governor-General was to act in his discretion, he was required to act in accordance with the advice of his Ministers. Provision was also made for the Federation to delegate executive authority to the Territories, and (within a defined sphere) for the Territories to delegate similar authority to the Federation. All these proposals were not materially altered in the final scheme.

In Volume XX of the JOURNAL, on page 166, attention was drawn to the proposal by the Conference of Officials, for an "African Affairs Board" to examine all legislation to discover if any particular measure would, in its effects, impose disabilities upon Africans which were not equally imposed upon Europeans. The Chairman of the Board was to have been a "Minister for African Interests" chosen by, and directly responsible to, the Governor-General. In the new

draft to meet, in part, the objections of the Southern Rhodesia delegation, it was provided that the Chairman would be appointed by the Governor-General with the approval of Her Majesty's Government, and that he would not be a Minister. This slight concession to Rhodesian opinion was not, however, sufficient to appease the majority in that country who were opposed to the method of appointing the African Affairs Board. Accordingly, at the final Conference, the Board was made a Standing Committee of the Assembly. It consists now of the 3 European Members for African interests and of 3 of the African Members, one from each Territory, selected by these 3 European Members and the 6 African Members sitting together. The selection is by secret ballot, a separate ballot being held in respect of each Territory. When this selection has been carried out the names of the Board are then reported to the Governor-General, who then appoints, in his discretion, one of their number as Chairman and one as Deputy Chairman. The Members of this Board are empowered to sit and act, in the event of a dissolution, until the first meeting of the new Federal Assembly.

This Standing Committee-African Affairs Board has, in terms of the Constitution, the power to make to the Prime Minister, or through the Prime Minister to the Executive Council, such representations in relation to any matter within the legislative or executive authority of the Federation as the Board may consider to be desirable in the interests of Africans (Constitution, Article 70 (*a*)); and Article 71 (1) provides that:

> It shall be the particular function of the Board to draw attention to any Bill introduced in the Federal Assembly and any instrument which has the force of law and is made in the exercise of a power conferred by a law of the Federal Legislature if that Bill or instrument is in their opinion a differentiating measure. . . .

All proposed Bills must be sent to the Board before introduction, unless the Governor-General, in his discretion, has certified in writing that the proposed Bill is of such a nature that it is not in the public interest that it should be published before its introduction in the Assembly, or that it is so urgent that it is not in the public interest to delay its introduction in the Assembly until a copy has been sent to the Board. If at any stage during the passage of any Bill through the Federal Assembly, that Bill, whether as originally introduced or as amended at any stage, is, in the opinion of the Board, a differentiating measure, the Board may lay before the Assembly a report on the Bill stating their reasons for considering the Bill to be such a measure; and, if at any time after such a report has been laid the Board no longer consider the Bill to be such a measure, they may lay before the Assembly a further report to that effect. On the passing of any Bill by the Federal Assembly, the Board may present to the Speaker of the Federal Assembly a request in writing that the Bill shall be reserved by the Governor-General for the signification of

Her Majesty's pleasure, on the ground that it is a differentiating measure. This request must give the reasons why the Board considers the measure to be a differentiating one. The Speaker is required to forward this request to the Governor-General with the Bill when it is sent for assent. When such a request is received by the Governor-General, he must reserve the Bill for Her Majesty's assent unless he is satisfied that the request of the Board is irrelevant or frivolous or that it is essential, in the public interest, that the Bill should be brought into immediate operation.

Where subordinate legislation is concerned, the Board may, at any time within 30 days after the publication of an instrument, send to the Prime Minister a report stating the reasons why the Board considers the instrument to be a differentiating measure. Within 30 days, the Prime Minister must send the report and his comments thereon to a Secretary of State (*i.e.*, the Secretary of State for Commonwealth Relations), who may within twelve months disapprove of it, and, after due notice to that effect has been published by the Governor-General, the instrument shall be deemed to have been annulled.

The African Affairs Board, and the changes made in it by the various conferences, have been described at some length because the whole conception is somewhat extraordinary and certainly beyond what one would expect to find in a constitution which follows honoured precepts in all other respects. The germ of the idea can, I believe, be found in the "Fijian Affairs Board", which exists in Fiji to help look after the rights of the native Fijians. It will be interesting to see how the Board works in practice. The detailed provisions relating to the Board will be found in the Constitution, Chapter VI, Articles 67 to 77.

With regard to Finance, the Draft Federal Scheme recommended that a Fiscal Commission should be set up to investigate the financial consequences of Federation, and to make recommendations about revenue and expenditure, borrowing powers and the transfer of liabilities and assets from the Territorial Governments to the Federation. This Comission was appointed and reported in October, 1952.* Their recommendations, with certain minor modifications, were incorporated in the final scheme in 1953. The experience of fifty years of Federation in Australia was of the utmost value to this Commission, and an examination of their report will show that their aim has been to suggest methods of avoiding the difficulties encountered in Australia.

It was also recommended that a Commission should be set up to work out details of how the Federal Public Service was to be established, including the arrangements for transfer to the Federal Public Service of some of the officers and other employees of the Territorial Services. This Commission also reported in October, 1952, and its recommendations were incorporated in the final scheme.

The Draft Scheme also recommended the setting up of a Judicial Commission to make recommendations relating to the establishment of a Federal Supreme Court. This Commission also reported in October, 1952, and its recommendations were included in the final scheme.

Finally, it was proposed that the Federal Assembly should have power, by a two-thirds majority of the total membership, to amend the Constitution, although the Bill would have to be reserved by the Governor-General for the signification of Her Majesty's pleasure. There was also provision that if a Territorial Legislature, or the African Affairs Board, objected to any Bill to amend the Constitution, Her Majesty's assent to the Bill could only be given by Order-in-Council which would be laid in draft before the United Kingdom Parliament. The power to amend the Constitution included power to institute a second chamber.

In the final scheme, as adopted, it is provided that no Bill to amend the Legislative Lists may be introduced in the Federal Assembly until after the expiry of 10 years from the date of the coming into force of the Constitution, except with a positive resolution of all 3 Territorial Legislatures that they do not object to its introduction in the Federal Assembly. Not less than 7, nor more than 9 years from the date when the Constitution comes into force, a Conference representing the 4 Governments and the United Kingdom Government will be convened for the purpose of reviewing the Federal Constitution. Apart from this, the procedure for constitutional amendment remains as in the earlier draft.

The final Conference was held in London in January, 1953. It produced "The Federal Scheme",[7] a report which, while not being the final Constitution, went into very great detail; and "Report by the Conference on Federation",[8] a summary of the Scheme. It was upon the "Federal Scheme" that the people of Southern Rhodesia voted at a referendum held on 9th April, 1953.

Before the referendum, the Scheme was thoroughly debated in the Southern Rhodesia Legislative Assembly on the Motion for the Second Reading of the Federation Poll Bill, and again in Committee on the Bill.[9] At the Referendum, 62·9 per cent. of those who voted favoured Federation in terms of the Scheme. The Scheme was also approved by the Legislative Councils of Northern Rhodesia and Nyasaland. The final seal of approval was given when the Royal Assent was given to the Rhodesia and Nyasaland Federation Act.[10] On 1st August the Federation of Rhodesia and Nyasaland Order-in-Council, 1953, was made, and on 7th September the Rt. Hon. the Lord Llewellin, P.C., G.B.E., M.C., T.D., D.L., was sworn in as Governor-General. He called upon the Rt. Hon. Sir Godfrey Huggins, C.H., K.C.M.G., M.P., the former Prime Minister of Southern Rhodesia, to form an interim Ministry to hold office until elections for the first Federal Parliament could be held.

The drafting of Standing Orders for the first meeting of the Federal Parliament was entrusted to a Committee consisting of Colonel G. E. Wells, O.B.E., E.D. (Clerk of the Legislative Assembly of Southern Rhodesia), Mr. E. A. Fellowes, C.M.G., M.C. (Clerk-Assistant of the House of Commons), Mr. J. R. Franks (Clerk-Assistant of the Legislative Assembly of Southern Rhodesia), and Mr. K. J. Knaggs (Clerk of the Legislative Council of Northern Rhodesia). This Committee produced a very good, simple set of orders which, in terms of the Constitution, were approved by the Governor-General for use at the first meeting of Parliament. It says much for the Committee that these Orders were subsequently adopted by the House practically without alteration.

The first Federal General Election was held in December, 1954, and the Federal Assembly opened for the first time on 2nd February, 1954.

[1] The Federal Scheme proposed in 1951 was described in Vol. XX, Art. XVIII. *See* Cmds. 8233, 8234 and 8235 for full details of the original proposals.

[2] Cmd. 8411. [3] Cmd. 8573, Annex. II. [4] Cmd. 8573.

[5] Cmd. 8754. [6] Cmd. 8672. [7] Cmd. 8754. [8] Cmd. 8753.

[9] S. Rhod. Deb., Vol. 33. Part II, cc. 3953-4030, 4087-4200, 4203-38, 4416-74, 4477-4532, 4558-67, 4568.

[10] For debates in the Commons, *see* 515 *Hans.*, 407-514.

XVII. TERRITORY OF NORTHERN RHODESIA: CONSTITUTIONAL CHANGES

By K. J. Knaggs,

Clerk of the Legislative Council

1. The period from September, 1953, to February, 1954, saw substantial changes in the constitutional position in Northern Rhodesia. On 3rd September, 1953, the Protectorate became part of the Federation of Rhodesia and Nyasaland. On 23rd September the Secretary of State for the Colonies announced changes that were to be made in the territorial constitution, and these changes were in due course made. Upon the dissolution of the Ninth Council at the end of 1953, the constitution of the Legislative Council of Northern Rhodesia was changed by increasing the number of unofficial Members by four (to 18) and reducing the number of official Members by one (to 8) and, after the general election in February, 1954, the Executive Council was reconstituted with five official Members and four unofficial Members, all holding portfolios. The constitutional instruments effecting these changes were—

the Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1953,[1]

the Northern Rhodesia (Legislative Council) (Amendment) Order in Council, 1953,[2]
Additional Instructions passed under the Royal Sign Manual and Signet on 26th January, 1954.

2. Certain other changes of lesser importance have also been made in the constitution. The instruments making these changes were—

the Legislative Council (Amendment) Ordinance, 1953,[3]
the Legislative Council (Amendment) (No. 2) Ordinance, 1953,[4]
the Northern Rhodesia (Legislative Council) (Amendment) Order in Council, 1954.[5]

Federation

3. The Federal Constitution provided, amongst other matters, for the division of legislative powers between the federal and the three territorial legislatures, which within their exclusive spheres are in no way subordinate to one another. It contains in its Second Schedule two lists of matters with respect to which the federal legislature may make laws. The first list, entitled the Federal Legislative List, sets out the matters with respect to which the federal legislature has, and the legislature of a territory has not, power to make laws. In the second list, called the Concurrent Legislative List, are set out those matters with respect to which both the federal legislature and the legislature of a territory have power to make laws. Article 29 (4) of the constitution provides that the federal legislature shall not have power to make any other laws than those authorised and that, except as provided under the Federal Constitution, the legislative power of the legislature of any territory continues in accordance with that territory's constitution. Consequently the legislatures of the three territories, subject to their constitutions, have exclusive legislative powers in relation to all matters that are not mentioned in one or other of the two Legislative Lists.

4. A proviso to paragraph (2) of Article 29 of the constitution in effect makes all matters in the Federal Legislative List (matters within the exclusive legislative competency of the Federal Assembly) concurrent subjects until such date as the Governor-General in each case prescribes. This proviso was necessary in order to allow for there to be a gradual assumption of their full duties by the Federal Government and the Federal Assembly. At the date of writing (March, 1954) the only subject that had been prescribed by the Governor-General under the proviso was external affairs. It is to be expected, however, that further subjects will be prescribed in the course of the next few months and it should be noted that, under Article 35 (1) of the constitution, federal law prevails in the event of there being any inconsistency between a federal law and a territorial law dealing with a subject on which the federal legislature is competent to legislate. Further, at its first meeting the Federal

Assembly passed a Bill providing for the adaptation by Order by the Governor-General of territorial laws dealing with subjects within the competence of the Federal Government.

Legislative Council

5. The Northern Rhodesia (Legislative Council) (Amendment) Order in Council, 1953, was brought into operation on 31st December, 1953, the day after the dissolution of the Ninth Legislative Council. Under it the number of elected Members of the Legislative Council was increased from 10 to 12 and the number of African Members from 2 to 4. In the previous Legislative Council there had been 2 nominated unofficial Members representing African interests and their number is unchanged in the new Legislative Council. Consequently there are now 18 unofficial Members in the Council. Of them 12 are directly elected by the electorate and 4, the African Members, are indirectly elected, since they are appointed by the Governor after being selected for appointment by the African Representative Council, which is the summit of a pyramid of African representative bodies in the Territory. The decrease of one in the number of official Members was effected by deleting from the list of *ex-officio* Members the Administrative Secretary and the Economic Secretary (whose posts have since been abolished), thus reducing the number of *ex-officio* Members to 4, and by providing for there to be a fourth nominated official Member (in the last Council there had been 3).

6. The increase in the number of elected Members necessitated the re-delimitation of the Territory into 12 instead of 10 electoral areas. A select committee was appointed by the Legislative Council to make recommendations on this subject, and in its report it recommended that each of the 8 major towns on the line of rail should be an electoral area and that the remainder of the Territory should be divided into 4 rural constituencies. That report was adopted by the Legislative Council. Subsequently a Bill to give effect to the recommendations was passed and in due course enacted as the Legislative Council (Amendment) (No. 3) Ordinance, 1953; it was brought into operation on 31st December, 1953.

7. The constitution of Northern Rhodesia provides that the maximum duration of the Legislative Council shall be 5 years. The duration of the Ninth Legislative Council ran from July, 1948, and it should therefore have been dissolved at the latest in July, 1953. The imminence of Federation, however, made it likely that, if the dissolution then took place, the ensuing general election would be followed closely by a number of by-elections. It was known that a number of Members of the Council wished to contest seats for the Federal Assembly at the federal election later in the year and it was expected that the Federal Constitution would (as it now does) prohibit a Member of a territorial legislature who was elected to the Federal Assembly from taking his seat in the Assembly until he

had resigned his seat in the Council. Special provision was therefore made by the Northern Rhodesia (Legislative Council) (Extension of Duration) Order in Council, 1953, to enable the Governor to extend the duration of the Ninth Council for a further 9 months beyond the period of 5 years from the last general election.

8. The importance of holding the territorial general election within 2 or 3 months of the federal general election together with the delimitation of the Territory into 12 instead of 10 electoral areas introduced a complication over the preparation of the registers of voters. The Legislative Council Ordinance, which governs the preparation of the register, provides for certain notices to be given, for a revised register to be published and for certain periods of time to be allowed for claims and objections. If this procedure had been followed in order to prepare completely new registers for the general election, the general election would have been necessarily delayed for several months. The Legislative Council (Amendment) (No. 3) Ordinance, 1953, therefore made special provision by which a Chief Registering Officer was appointed, who was empowered to allocate the voters on the 10 registers then in force to the 12 new electoral areas and to publish the 12 new registers accordingly.

Executive Council

9. The Royal Instructions provide for the constitution of the Executive Council but do not specify the number of unofficial Members. By the Additional Instructions passed on 26th January, 1954, which were brought into operation on 20th February, 1954, 2 days after the general election for the territorial legislature, the Administrative Secretary and the Economic Secretary were removed from the list of *ex-officio* Members. This reduced the number of official Members of the Executive Council from 7 to 5. Subsequently, on 27th February, 1954, 4 unofficial Members were appointed to the Executive Council. Three of them were elected Members of the Legislative Council whose names had been submitted to the Governor by the elected Members with a view to their appointment to the Executive Council, and one was a nominated unofficial Member of the Legislative Council representing African interests.

10. There had previously been 4 unofficial Members in the Executive Council, but of them only 2 had held ministerial portfolios. Upon the reconstitution of the Council, however, all its members took portfolios, and the Council therefore now constitutes, under the chairmanship of the Governor, a body very similar to a Cabinet. The collective responsibility of the Members of the Executive Council to the legislature for the government of the Territory has been recognised, and in future they will sit together on the Government side of the Chamber. Previously this had not been the case; the 4 unofficial Members of the Executive Council had sat on the opposite side of the Chamber with the other unofficial Members of the

Legislative Council. It should, however, be noted that the left-hand side of the Chamber cannot, under the constitutional position that exists in Northern Rhodesia, be regarded as the Opposition benches. The elected Members of the Legislative Council who are Members of the Government retain their seats as elected Members.

Franchise

11. The Legislative Council (Amendment) Ordinance, 1953, increased from 6 months to 2 years the qualifying period of residence in the Territory for registration as a voter. Under a transitional provision contained in that Ordinance, anyone entitled to register immediately prior to the coming into operation of the Ordinance is deemed to posses the requisite qualification.

12. The most important change made by the Legislative Council (Amendment) (No. 2) Ordinance, 1953, was the removal of the previously existing disqualification from registration as a voter of a person who was a bankrupt or who had made a composition with his creditors and who had not received his discharge from bankruptcy or paid his debts in full.

Candidature and Membership

13. The Legislative Council (Amendment) (No. 2) Ordinance, 1953, also repealed and replaced the previously existing sections dealing with the qualifications and disqualifications of candidates and the disqualification of Members and transferred the bankruptcy provision from being a disqualification for registration as a voter to being a disqualification for candidature or membership.

14. Many of the other changes that that Ordinance made in the provisions relating to the qualifications and disqualifications of candidates and the disqualifications of Members were of a drafting nature only, and the only change of particular interest was that relating to Government contractors. Previously a candidate who had undertaken "either directly or indirectly himself or by anyone in trust for him" any contract with a Government department for which the consideration exceeded £100 was disqualified for election unless, at least 21 days before the date of the poll, he gave particulars of the contract to the returning officer (who was required to take such steps as he thought fit to give publicity to the fact) and published in a newspaper in the electoral area for which he was a candidate the fact of such contract with particulars of it. A sitting Member who undertook any such contract had to inform the Clerk of the fact, and the Clerk was required to publish it in the *Gazette*. When he had taken this action, the Member was exempt from forfeiting his seat.

15. Under the new provisions the definition of a Government contractor is made more clear. The disqualification ensues if the person concerned "becomes a party to any contract with the Govern-

ment for or on account of the public service for which the consideration exceeds £100, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to such a contract or if he becomes a partner in a firm or a director or manager of a company which is a party to such a contract". To avoid the disqualification a candidate must give one month's notice before the day of the election of the fact and the nature of the contract and his interest (or the interest of his firm or company) in it in the *Gazette* and in a newspaper circulating in the electoral area. A Member who wishes to avoid disqualification must apply for exemption to Mr. Speaker before becoming a party to the contract or before or as soon as practicable after becoming otherwise interested in the contract. Mr. Speaker is empowered to grant exemption but must report the fact with details to the Council as soon as practicable.

16. The Northern Rhodesia (Legislative Council) (Amendment) Order in Council, 1954, which was brought into operation on 26th February, 1954, made changes in the provisions relating to the disqualification for appointment as a nominated or African Member and relating to the disqualification of such Members that are parallel to the amendments relating to candidates and elected Members that are mentioned in paragraph 15 above.

Legislative Powers

17. The Northern Rhodesia (Legislative Council) (Amendment) Order in Council, 1954, also made special provision to avoid doubts that had existed whether the Legislative Council had power to pass legislation determining and regulating the privileges, immunities and powers of the Council and its Members. It specially provided that such privileges, immunities and powers should not exceed those of the Commons House of the Parliament of the United Kingdom and Northern Ireland. By a further amendment to the principal Orders, it was provided that any such Bill should be a reserved Bill.

[1] S.I. (1953) No. 1199. [2] *Ibid.*, No. 1907. [3] No. 6 of 1953.
[4] No. 57 of 1953. [5] S.I. (1954) No. 145.

XVIII. CONSTITUTIONAL REFORM IN BRITISH GUIANA: PERIOD OF TRIAL AND ERROR (MAY—OCTOBER, 1953)

By A. I. Crum Ewing,
Clerk of the Legislative Council

A few notes on recent constitutional and parliamentary developments in British Guiana must record the fact that, although there were political parties in existence before, there was no emergence of Party Government until the People's Progressive Party, formed less than 5 years earlier, sat in the House of Assembly with a majority of 18 out of 24 elected seats, as from 18th May to 8th October, 1953, under the new Constitution. Other Parties sponsored candidates for the General Elections, but only the National Democratic Party succeeded in obtaining seats (2). These 2 Members, along with 4 Independents, therefore comprised the Minority Group —sometimes referred to by the Majority Party as the "Opposition".

H.E. the Governor, Sir Alfred Savage, K.C.M.G., at the state opening of the Legislature (Members of the House of Assembly and the State Council), delivered an address in which he conveyed messages of goodwill from Her Majesty the Queen and the Secretary of State for the Colonies, Mr. Oliver Lyttleton. Her Majesty noted that the Members of the Legislature had been entrusted with the heavy responsibility of advancing the prosperity and well-being of the territory, and expressed the hope that they would always bear in mind the high trust that had been placed in them in carrying out that task. To them, and to all her peoples, Her Majesty sent greetings on that notable occasion, and her good wishes for the success of the Constitution.

The Secretary of State for the Colonies also stressed the special responsibility which rested upon the shoulders of those who were to lead in the new era, and added that it was his earnest hope that the House and the State Council would build up a tradition of obligation to the interests of the people, of orderly debate and of good government.

The Governor urged upon the Members of both Chambers and the general public the necessity to study carefully the provisions of the new Constitution. Its terms, he said, represented the most progressive constitutional changes which British Guiana had ever experienced. Here, as in other parts of the Commonwealth, the declared policy of Her Majesty's Government to advance colonies to the goal of self-government as speedily as their political and economic development would allow, had been applied in the most practical manner. He was aware, he said, that the party in power had expressed themselves as opposed in principle to the provision in the Constitution for a second Chamber. They had suggested that

it was superfluous, since in any case it had no power effectively to oppose the will of the House of Assembly.

But it was wrong, the Governor suggested, to regard the State Council as an Opposition. While it was true that its function was to act as a check—as the 2 Members of the Constitutional Commission who recommended it had pointed out—he was confident it would exercise this function with discretion.

Observing that there was criticism also of the retention of the 3 *ex-officio* Members (the Chief Secretary, the Financial Secretary and the Attorney-General), His Excellency pointed out that each had his individual function and responsibility as a Member of the Government, and, like himself, they were anxious to give every possible assistance to the elected Ministers and to place their experience at the Government's disposal.

In the State Council's reply to the Governor's address it was stated:

> The State Council wishes in the first place to assure Your Excellency that it is and will be ever mindful of the importance of its role under the new Constitution, and that it will exercise its constitutional functions with a due sense of responsibility and service to the whole country and its people. In this connection the State Council records that it emphatically endorses the view and conclusion of the framers of the Constitution that a Second Chamber endowed with reasonable powers of scrutiny and review is, and must remain, an essential feature of the Legislative process of this country.

In the House of Assembly the Leader of the House (Dr. C. Jagan) moved a comprehensive Motion in reply to the Governor's speech. This Motion embodied replies to the messages of goodwill received from Her Majesty and the Secretary of State for the Colonies, and also enumerated the following views, *inter alia,* of the People's Progressive Party:

(1) The House would strive to the utmost for the happiness and well-being of the people of British Guiana and would remove every obstacle which may be placed on the road to peace, progress and prosperity; (2) They harboured no illusions about the nominated State Council which could only serve the purpose of curbing the will of the people—a reactionary and undemocratic purpose; (3) The presence of three Civil Servants in the House and their control of the three key Ministries in the Government, and the Governor's veto, were an anomaly and contrary to the professed democratic principles of H.M. Government. They would continue to struggle for a democratic Constitution for British Guiana.[1]

The business of the new Legislature during its 143 days of existence—from inauguration day, 18th May, to the suspension of the Constitution on 9th October—included 11 Bills, only 2 of which reached the stage of being enacted as laws of the Colony. Both were non-controversial measures—one extended the duration of the Bartica Village register of voters for a further period of one year

while the other made provision for the appointment of a Fourth Puisne Judge.

Under the British Guiana (Constitution) Order in Council, 1953, the State Council elected: (*a*) one of its Members to serve as its President; and (*b*) one of its Members to serve as Minister without Portfolio on the Executive Council. Sir Frank McDavid, C.M.G., C.B.E., was elected both President and Minister without Portfolio, and in the latter capacity he introduced into the State Council all Government measures passed by the House of Assembly.

During its life the State Council dealt with 6 Bills and rejected 1—the Rice Farmers (Security of Tenure) (Amendment) Bill, 1953. This Bill, which had been described in the House of Assembly by Dr. Jagan as an emergency measure to avert a crisis on account of flooding of rice areas due to heavy rainfall, also included some controversial clauses concerning land reform. Opposition to the Bill by the Minority Group in the House of Assembly was very strong. They suggested its deferment pending consideration of a report recently submitted by a Committee which had been appointed "to examine the Rice Farmers (Security of Tenure) Ordinance, 1945 (Principal Ordinance), in the light of its operation since its commencement and to make recommendations", and the early introduction of a comprehensive land tenure Bill as recommended by the Committee. The Committee had arrived at its decisions after taking evidence throughout the rice-growing areas of the Colony.

Objection to the Bill in the State Council was much on the same lines, and it was eventually rejected when Mr. Robertson, one of the P.P.P. nominees to that body, stated: "I will agree that the emergency has passed."[2]

One of the first acts of the new Government was to repeal the Undesirable Publications (Prohibition of Importation) Ordinance, 1953 (No. 4), passed by the former Legislative Council on 27th February. Prior to the enactment of this Ordinance the Comptroller of Customs had seized certain publications, and those seizures were validated by Section 7 of the Ordinance. Clause 3 of the repeal Bill provided that any acts declared to be valid in that regard in the Ordinance "are now declared never to be validated". This was described by the Attorney-General as "not constitutionally proper".[3]

Members of the State Council expressed the view that it was bad law, and accordingly deleted the clause and returned the Bill to the House of Assembly, which did not accept the deletion of the clause. No further action having been taken up to the time of the suspension of the Constitution, the Bill accordingly lapsed.

The first real indication of the attitude of the Majority Party in the House of Assembly to the State Council was shown in the debate which took place in June on a Bill "to make provision for payment of remuneration to Elected Members of the House of Assembly and for payment of travelling expenses and subsistence allowances to

Members of the State Council and the House of Assembly ". The Bill did not provide for payment of remuneration to Members of the State Council, and an amendment seeking to effect this was introduced by a Member of the Minority Party. This met with strong criticism by the Members of the Majority Party, who felt that the Members of the State Council were not performing any useful function except checking the will of the House, and therefore should not be paid. The Bill was passed and referred to the State Council. As it was not considered by that body during the short life of the Legislature, it was quashed on prorogation.

A question on which the two Chambers did not reach the same conclusion was the representation of the Colony at Jamaica during the visit of Her Majesty the Queen. On 24th July, the Speaker of the House of Assembly (Sir Eustace G. Woolford, O.B.E., Q.C.) announced that the Speaker of the House of Representatives and the President of the Legislative Council of Jamaica had invited two representatives from the Legislature of British Guiana and their wives to be present in Jamaica on the occasion of Her Majesty's visit to that island between 24th and 28th November, 1953. As the invitation to the Legislature included the House and the State Council, the Speaker decided to await the imminent return to the Colony of the President of the State Council to ask him to join in convening an informal meeting of the Legislature to select the two representatives. Due to the attitude of the Leaders of the Majority Party to the invitation, the State Council took independent action, and on 10th August, by resolution, recorded its thanks for the invitation, and requested the Government to provide the funds necessary to cover the travelling expenses of the delegates and their wives. Five days later the Press, following an interview with the Leader of the House, reported that the Colony's Executive Council had decided it could not accept the invitation, and that Dr. Jagan had " admitted that the decision had been made two or three weeks ago ". The report went on to state that Dr. Jagan had said that whatever funds were available in the Colony would be utilised to alleviate the many present financial problems.

On the strength of this information the Leader of the Minority Group (Mr. W. O. R. Kendall) moved a Motion at the next meeting of the House, held on 28th August, recommending that funds be voted for representatives to be sent, and reaffirming the loyalty of the House to Her Majesty.

The Leader of the House objected to inclusion of reaffirmation of loyalty on the grounds that this had only recently been done, and with regard to the provision of funds to send representatives to Jamaica he declared that at least the " people's Ministers "—elected Ministers—were not prepared to change their decision. After a lengthy debate the Motion was amended and passed on 10th September, merely recording thanks for the invitation.

It might be of interest to quote the following extract[4] from the *Hansard* report of the speech of the Chief Secretary (the Hon. John Gutch, C.M.G., O.B.E.) in the House of Assembly on the Motion:

> The reason for the decision taken in the Executive Council and subsequently announced by the Leader of the House, for refusing the hospitality so generously offered to British Guiana by the Government of Jamaica, was that this country, in the parlous state of its finances, could not afford the money to pay the fares of the delegates. Nevertheless, there can be no doubt at all that a most unfavourable impression has been created both in this Colony and in the West Indies and elsewhere by that decision, and I would urge on the House the case for reconsidering that decision in the light of the reaction which it has provoked.
>
> It would not be right for me to impugn the motives of my fellow Members of this House, and I should hesitate to do so, but the tone and course of the debate, and some of the speeches that have been made, have left little doubt in my mind—and I dare say in the minds of others—that there are other motives at work in this matter besides those of conserving finance.

Under the Constitution, laws were to be enacted with the advice and consent of both Chambers. This, of course, included appropriation laws covering the annual estimates and supplementary estimates. However, two points should be emphasised with regard to money Bills. Firstly, while the State Council was endowed with powers of review, revision and delay, limited in the case of money measures to three months only, the House of Assembly was the dominant instrument in the realm of finance. Secondly, no money Bill or subordinate matter incidental to a money Bill, such as annual or supplementary estimates, could be dealt with by the State Council until it had been passed by the House of Assembly. It was the practice, however, for supplementary schedules of expenditure to be approved by the Finance Committee of the House of Assembly monthly, and in order to expedite action on such matters in the schedules the Governor, immediately following approval of those schedules by the Finance Committee, issued a warrant to the Financial Secretary authorising the incurring of the expenditure. The State Council therefore found it necessary to devise some procedure for taking concurrent action on these monthly schedules of expenditure approved by the Finance Committee.

In this connection the President, in a statement, explained to Members that it was not competent for the State Council to take any action to approve or otherwise of schedules of additional provision passed by the Finance Committee until such schedules had been embodied in supplementary estimates and duly approved by the House of Assembly.

The procedure the President hoped to adopt, unless an alternative was suggested and accepted by Members, was that schedules passed by the Finance Committee and transmitted to him would be tabled in the State Council and could be the subject of a question or an appropriate Motion on any matter of policy relative to any item

appearing therein, and would provide an opportunity for consideration and discussion of the specific items of expenditure and of general policy with respect to departmental heads appearing therein.

Appropriation laws, both annual and supplementary, would come before the Council in the normal way as Bills passed by the House of Assembly.

Subsequently, it was found necessary to establish a Finance Committee of the State Council which would take current action on monthly schedules. Items not approved by the State Council for one reason or another were not included in the Warrant issued by the Governor, but were held in abeyance for consideration in the House. Incidentally, only one small item of expenditure was reserved during the life of the Legislature.

A strike called in late August by the Guiana Industrial Workers' Union, led by its President (Hon. Dr. Lachmansingh, Minister of Health and Housing), involving some 30,000 workers on sugar estates was, during September, threatening to develop into a general strike. On 21st September, the twenty-second day of the strike, His Grace the Archbishop of the West Indies (Dr. A. J. Knight, D.D., M.A., LL.B.) moved in the State Council a Motion deploring the existence of a stoppage of work in one of the main industries, expressing sympathy with those who were suffering as a result, and asking all concerned to renew their efforts to end it. In this Motion the Archbishop also urged that the Council should express regret at the fact that Ministers of the Crown in the Colony had been actively engaged in various parts of the country promoting and sustaining the strike, and that they were continuing to do so. His Grace further urged that the Council, being convinced that such action by the Ministers was a grave danger to the Constitution, a direct threat to the peace and security of the citizens of the Colony, and a negation of good and responsible democratic government, should ask the Governor immediately to request the Secretary of State for the Colonies, after due enquiry, to take such action as he might deem fit to ensure confidence in the Government and the proper and efficient working of the Constitution. The Archbishop stressed that he still believed in the Constitution; he prized it and was determined, as a Member of the Council, to do everything possible to uphold and maintain it, and see that it worked efficiently.

All other Members present supported the Motion with the exception of the two nominees of the Majority Party. Mr. Robertson said he agreed with the first part of the Motion, especially the words "urges all concerned to renew their efforts to end the strike". The second part, he declared, was based on reports going around the country and reports appearing in the newspapers, in which there was no truth; and he did not see any reason for the last part which called for an investigation by the Secretary of State. He pointed out that

the people wanted to strike, and now that they were on strike he felt they should be supported.[5]

The Motion was carried.

On 24th September, Dr. Lachmansingh, Minister of Health and Housing, intimated to the House that the strike, which had then lasted 25 days, had been called off with effect as from noon that day. It was at this meeting that all but one of the 14 Members of the Party in power who were present, including four Ministers, walked out of the Chamber after the Speaker had refused to entertain a Motion by the Minister of Labour (Hon. Ashton Chase) to suspend the Standing Rules and Orders to enable him to take through all its stages that day the Labour Relations Bill "to secure the recognition by employers of certain trade unions and for matters connected therewith". It is the practice in the Colony for all Bills to be published in the *Gazette* prior to notice of introduction and first reading. This Bill was published on 19th September, and notice of its introduction and first reading was given by the Minister of Labour on 24th September. The Speaker pointed out that there was no great urgency for a suspension of the Standing Rules and Orders and that as the Bill was controversial it was desirable that the public should have at least the 7 days' notice provided for in the Standing Rules and Orders of the House. He regretted, therefore, that he could not entertain any Motion for the suspension of the Standing Rules and Orders as requested by the hon. Minister.

The Minister of Education (Hon. L. F. S. Burnham) questioned whether it was in the Speaker's discretion to decide if a Motion for the suspension of Standing Orders should or should not be allowed; and suggested that it should be left to the House to decide. Mr. Speaker said he could not allow such a measure to be rushed through, and whether or not the Standing Orders allowed him a discretion in the matter, he was entitled to draw upon the existing practice in the House of Commons, by virtue of the provisions of Standing Order No. 54, which reads:

> In all cases not provided for . . . or in these Rules and Orders, the practice and procedure of the Commons House of Parliament of Great Britain shall be followed so far as the same may be applicable to the Council.

The Speaker then called on the mover of the next item in the Order of the Day; whereupon the Ministers and Members (except one) of the Government Party left the House in protest. They were followed by the supporters of their Party in the public gallery. When order was restored there were just enough Members (including the one Member of the Government Party who remained in the House) for a quorum, and the meeting proceeded. The *ex-officio* Members (the Chief Secretary, the Attorney-General and the Financial Secretary) and Members of the Minority Group in the House joined in protesting against the behaviour of the people in the public gallery

and expressed surprise that such behaviour had been encouraged by the Members of the Government.[6]

Despite the announcement that the strike had ended that day, tension remained high, with thousands of estate workers still present in the City. It was in this atmosphere that a P.P.P. mass meeting was held that night at the Bourda Green, at which some 15,000 persons were present. Newspaper reports of the meeting alleged that the Minister of Labour, Industry and Commerce (Mr. Ashton Chase) had attacked the integrity of the Speaker in regard to his ruling against the Minister's attempt to take the Labour Relations Bill through all stages that day.

Five days later (on 29th September) when the House resumed to proceed with the second reading of the Labour Relations Bill, which had aroused considerable interest throughout the country, the Speaker, commenting on the walk-out of Members of the Government at the previous meeting, and the alleged comments by the Minister of Labour at the public meeting at Bourda Green, remarked that while he had witnessed a walk-out in the British House of Commons some three score years ago by Members of the Irish Party of that day, he knew of no other occasion in parliamentary history when Members of the Government walked out, as was done in this case. He went on to state that it was not only improper but incorrect for anyone who knew him to suggest that he was partial to any particular industry.

At this meeting the Minister of Labour (Mr. Chase) moved the second reading of the Labour Relations Bill. He explained that the object of this Bill was to enable the Minister of Labour, after due investigation, to direct that certificates be issued to certain trade unions, and from the date of such certificates employers concerned would be bound to deal exclusively with those trade unions in respect of all questions arising between any worker and his employer including termination of employment. Failure by an employer to recognise and deal with such a union would render him liable to a fine not exceeding $500 or to imprisonment for twelve months, or to both fine and imprisonment, and to a continuing penalty of $100 for each day during which he continued to fail to recognise the union.

The debate lasted seven days. In Committee all major amendments proposed by the Attorney-General and Members of the Minority Group were rejected, and the Bill was finally passed by the House with a few minor amendments on 8th October, the day before the Constitution was suspended.

A prominent question during the life of the new Legislature was that of visitors to the Chamber. Hundreds of people sought admission to the House of Assembly meetings but only about 180 could be accommodated in the Chamber itself, so that a large number were left in the corridor, the lobby and passageways. Police supervision for the observance of order had to be constant, both outside

and inside. On the day of the "walk out", conduct inside the Chamber was rowdy, and most of the spectators also left when the legislators walked out. In the yard of the Public Buildings and its immediate vicinity crowds also lingered during sessions of the House, to cheer the Ministers of the Party while coming from their Ministries to the House and returning. On the day of the walk-out they cheered P.P.P. legislators and booed Members of the Minority Group, surging round the cars of the last-named. Hostility by certain elements in the crowds outside the Chamber became so apparent day by day that extra police guard was provided, and Official Members were escorted to the Chamber. Eventually tickets were issued for seats in the Chamber, and were applied for as quickly as would be tickets for some important event. Objection was taken by the Majority Party to the presence of so many policemen around, and it was also suggested that the proceedings of the House should be broadcast by way of a loudspeaker being installed outside the Chamber. The Chief Secretary, urging against this suggestion, pointed out that it would be lowering the proceedings of the Legislature to the level of street-corner meetings. The Speaker stressed that he was being asked to create a precedent, and he was not prepared to be responsible for a doubtful precedent. He felt that the matter could be discussed at a private meeting, later.

Another instance in which the Speaker did not allow the suspension of the Standing Rules and Orders was in connection with the arrival of British forces into the Colony, imminent on the suspension of the Constitution. When the House met on 7th October the atmosphere was charged with excitement due to the report that units of Her Majesty's Forces were on their way to the colony and to the presence of representatives of the British and American Press in the Chamber.

The Leader of the House (Dr. Jagan) drew the attention of the Speaker to the "grave" situation which, he said, had been created by the announcement from the Colonial Office that British Naval and Military forces were speeding to British Guiana, and said that Members of the Executive Council had not been consulted or advised by His Excellency on that "unwarranted" action. Expressing the view that the presence of "foreign" troops in the Colony could only be regarded as "an act of intimidation and provocation intended to precipitate a crisis", he gave notice of a Motion and of his intention to move the suspension of Standing Rules and Orders to enable him to proceed with it that day. The Motion called for efforts to secure immediate withdrawal of the troops, and for copies of the Motion to be forwarded to the Secretary of State for the Colonies, the British Labour Party, the National Council of Civil Liberties, N.Y., the U.S. Congress of Civil Rights, the United Nations Organisation, the World Peace Council, the Council of African Affairs, the West Indian Students' Union, the Caribbean Labour Congress (London

Branch), the International Confederation of Free Trade Unions, the World Federation of Trade Unions, the Pan American Union and the Indian Delegation to the United Nations.

After the Leader of the House had asked leave to move the suspension of Standing Rules and Orders the Speaker said he had received no official intimation as to the presence or otherwise of Military and Naval Forces in the Colony, apart from what he had read in the newspapers. If Dr. Jagan was challenging or proposed to resist a decision of Her Majesty in Council, he thought it would be improper for him to entertain the Motion for the purpose of discussing the decision—of which he had not been notified directly from London, or here in the Colony. The Motion was entirely out of order and he could not allow a Motion for the suspension of Standing Rules and Orders in order to debate it.

At the following day's meeting the Speaker himself made an announcement on the subject. He said that although he had since seen members of a European infantry battalion in the City, seen or heard planes flying overhead and heard the news over the B.B.C., he was not in a position to say what was the purpose of their visit. Since they were not at war with anybody he assumed their presence was for the purpose of peace and security. Ordinarily, the Speaker said, he would not have made the announcement, but he was compelled to do so as a result of an interview which he had had with the Leader of the House before coming into the Chamber. He had informed him that in his opinion the disposition of H.M. Forces in this or any one of her territories was one for which there must be some important reason, and if Dr. Jagan wished to make a Motion with respect to it he could not allow such a Motion to be discussed because it was a decision reached by Her Majesty and Her advisers, the nature of which and the reasons for which he did not know. But he had good reason for thinking that someone who was in a position to do so would communicate some information not only to him but to the House.

He added that the Leader did not take that kindly and accused him of partiality and of acting under dictation. To which he had replied that he was not capable of being partial or of being dictated to. Dr. Jagan indicated that if he was not allowed to move the Motion, he would withdraw from the proceedings, and he (the Speaker) told him that that would not prevent him from summoning a meeting of the House if he wished to communicate something to the House, and when that happened and Dr. Jagan was not there to move his Motion it could not be moved by anyone else. He had reminded Dr. Jagan that his Motion was still on the Order Paper and still open for discussion.

The House was about to proceed with the Order of the Day when Dr. Jagan remarked that the Speaker did not take the information from him that the troops were in the Colony—now a matter of

common knowledge. It was strange that the Speaker was taking the attitude that he must be informed by the Governor of the fact. The Speaker was taking more power than he had, and his action showed that he was partial.

Mr. Speaker said:

> I will not allow the hon. Member to repeat that statement. The Speaker is above party and above politics.

After further exchanges, during which the Attorney-General supported the Speaker's ruling that the matter could not then be discussed, the Order of the Day was taken.

Of constitutional interest also is the Motion, tabled in the House, seeking provision for the recall by the electorate of Members elected to the House of Assembly.

It is also of interest to note that the P.P.P. members, Miss Jessie Burnham (primary school teacher), Mrs. Janet Jagan (Party Secretary) and Mrs. Jane Phillips-Gay (Trade Union Secretary), were the first of their sex to be elected legislators in the Colony. As election results came in, Miss Burnham was the first. Further precedent was created in British Guiana when Mrs. Jagan was elected Deputy Speaker of the House of Assembly on 18th May, 1953.

Following the prorogation of the Legislature on 9th October the Colony functioned without a legislature until 5th January, 1954, when an Interim Government was established under the British Guiana (Constitution) (Temporary Provisions) Order in Council, 1953, pending the submission of the Report of the Constitution Commission and the decisions by Her Majesty's Government thereon.

The Interim Government consists of a Legislative Council with a Speaker appointed by the Governor, 3 *ex-officio* Members (the Chief Secretary, the Attorney-General and the Financial Secretary), and 24 Members nominated by the Governor. The Executive Council comprises the Governor, the 3 *ex-officio* Members of the Legislative Council, and 7 nominated Members of the Legislative Council, 4 of whom are charged with Ministerial responsibility.

[1] H.A. *Hans.*, 17.6.53, c. 33.
[2] S.C. *Hans.*, 23.9.53, p. 262.
[3] H.A. *Hans.*, 24.7.53, c. 335.
[4] *Ibid.*, 10.9.53, c. 476.
[5] S.C. *Hans.*, 21.9.53, c. 224.
[6] H.A. *Hans.*, 24.9.53, cc. 581-5.

XIX. THE PARLIAMENTARY AND CONSTITUTIONAL ASPECTS OF THE EMERGENCY IN KENYA IN 1953

BY A. W. PURVIS, LL.B.,
Clerk of the Legislative Council

The declaration of a State of Emergency by the Governor of Kenya in October, 1952, was the culmination of a series of measures designed to prevent the spread of subversive activities with particular reference to the Mau Mau movement, which had been known to exist for some time. The fact that these measures had not been taken before must be attributed to the natural distaste of restriction peculiar to British rule.

Furthermore it was extremely difficult to obtain evidence of subversive activities. As early as September, 1952, one magistrate stated:

> The time has come to warn certain people that it is my experience in dealing with Mau Mau cases in this place that there is an obvious reluctance on the part of many who could give valuable evidence to come forward.

In an attempt to overcome this difficulty, legislation was introduced to allow sworn statements to be accepted as evidence and to render admissible confessions recorded by responsible police officers or by administrative officers acting in that capacity.

Other measures passed before the State of Emergency was declared gave powers:

1. To remove undesirable persons from certain areas without reference to a court of law (Special Districts (Administration) Ordinance, 1952).
2. To impose restrictions on the use of roads (Police (Amendment) Ordinance, 1952).
3. To regulate and control those societies which were subversive in character (Societies Ordinance, 1952).
4. To require everybody who has a printing press to have it registered or licensed (Printing Press (Temporary Provisions) Ordinance, 1952).

As the Emergency became more acute the need for sterner measures was urged by the unofficial Members. In January, 1953, a Motion

> that this Council is of the opinion that during the Emergency the offence of administering an oath to commit capital offences shall be punishable by death[1]

was tabled and accepted by Government. Regulations giving effect to this decision were accordingly introduced, but in July the Attorney-General stated:

> It has been found latterly that the form that the Oath has taken has changed. Instead of being an oath specifically to commit a capital offence, it is in more general terms to do whatever the person taking the Oath is told to do.[2]

This difficulty was overcome by a further Regulation which pro-

vides the death penalty for any person who administers, or is present and consents to the administration of, any oath, or engagement in the nature of an oath, related to the unlawful society commonly known as "Mau Mau".[3]

This is an indication of the problems with which the processes of justice were faced. In October, 1953, Mr. Michael Blundell, the leader of the Opposition, or the leader of the Elected Members as he is more correctly called, in moving for the acceleration of the processes of justice, stated that since the Declaration of the State of Emergency in October, 1952, 573 persons, of whom 449 were Africans, had been killed by Mau Mau terrorists, but hardly any executions had taken place. He instanced particularly the case of the Lari Massacre, which took place on 26th March. Over one hundred persons had been convicted of murder as a result of the investigation into this massacre, but not one had yet had his sentence carried out. The delay was, he asserted, undermining the Government's authority. He said:

> Unless we can convince the great majority of our people that the processes of our law are as effective against wrongdoers as the old tribal sanctions, we are going to have a great danger before us which is an increasing and more alarming spread to achieve wealth by murder and assault rather than by honest endeavour.[4]

At the time that this was said the full effect of Regulations which had been made was not apparent. In fact measures had been taken to speed up the processes of justice. Thus Government Notice 1403 of 1952 provides that the process of preliminary inquiry may be dispensed with in cases arising from the Emergency. In October, 1953,[5] the jurisdiction of the Magistrates' Courts was considerably enhanced, enabling them to take offences involving sentences of up to fourteen years or fines of fourteen thousand shillings (£700). Courts of Emergency Assize have been set up in the disturbed areas in accordance with the provisions of Government Notice 931 of 1953 to dispose of emergency cases punishable by death.

At the same time steps were taken to reduce the time in which appeals against sentence could be lodged from thirty to fourteen days. Furthermore, such leave is now exercisable on the certificate of the Court of Trial only, without the alternative of that Court being overruled by the Court of Appeal.[6] In these ways the processes of justice were greatly speeded up without breaking away from the fundamental principles upon which British Justice is based.

To summarise, this was achieved by:

1. making possible the acceptance of sworn statements without the necessity for witnesses to appear in person;
2. extending the powers of subordinate Courts to cover more serious offences;
3. dispensing with the necessity for preliminary inquiries;

4. establishing special Courts of Assize; and
5. reducing the period of time allowed for appeal, the Court of Appeal being no longer allowed to grant such leave.

There was still, however, a great body of vocal opinion which sought to loosen the control of the United Kingdom Government over the activities of the Kenya Government. While this did not result in any constitutional change it is important to remember its existence. Thus the Council was asked to "urge the Secretary of State to allow greater power of decision by the Government in Kenya".[7]

Mr. Blundell said

> We have never prosecuted the Emergency with our face straight forward. We have always tended to look over our shoulder, and that has stemmed from the system under which we labour. . . . We will never overcome the problem as long as we are concerned with . . . what people in other countries are thinking.[8]

Mr. Chanan Singh (Asian Member), on the other hand, opposed the Motion because he had

> always felt the Colonial Office interferes in the administration of the Colony much less than it should. . . . . The Government of the Colony is established under Order in Council, and I personally think that the time for giving more power to the Government of Kenya will not arrive until it is possible to associate all races with the administration of the Colony.[9]

The Chief Secretary, after pointing out that the ultimate responsibility lay with the Parliament in the United Kingdom through the Secretary of State, denied that there had been any undue delay on this account, and Government refused to accept the Motion,[10] which was lost on a Division by 32 votes to 12, the Ayes consisting entirely of European Elected Members.[11] In a Statement of Policy published a month later by the European Elected Members' Organisation, it was conceded that

> for the immediate future, the Government of the Colony must continue to derive its authority from powers delegated by the British Government.

It will be seen from this that no section in the Council sought separation from the United Kingdom but rather to stress the need for urgency in the prosecution of measures needed to bring the State of Emergency to an end.

Other restrictions upon the freedom of the individual resulting from the Emergency cover all possible channels through which subversive activities might be undertaken. There is a restriction on the freedom of public meeting and on the formation of political associations. As a result of action taken under these restrictions there is at present no African political organisation on a colony-wide scale. This matter is being investigated with a view to finding a way of giving Africans a suitable channel for the legitimate expression of their opinions. Meanwhile the 6 African Members of the Council take every possible opportunity for expressing their opinions on the floor of the Council Chamber.

There are also a series of restrictions on movement effected by the issue of special identity cards for certain tribes affected by "Mau Mau" influence. The issue of railway tickets can be prohibited and the use of any means of transport can be regulated or even prohibited, while certain areas have been declared prohibited areas and any person seen in these areas may be shot at sight. It should be explained that the prohibited areas are normally uninhabited in any case, and it is only because the normal places of habitation have become too unpleasant that the terrorists have resorted to them. The result is that these areas have virtually become battle grounds.

Another series of Regulations seeks to prevent the supply of funds and supplies to those working against the forces of law and order. Example of these are:

The Emergency (Control of Authorities and Sulpha Drugs) Regulations, 1953,[12] which limits the prescription of these drugs to amounts required for a period of seven days.

The Emergency (Control of Crops, Food and Dwellings) Regulations, 1953,[13] which authorises a Provincial Commissioner to prohibit the growing of crops and control the erection of building in any specified area.

The Emergency (Control of Livestock) Regulations, 1953,[14] which provides for the protection of livestock.

The Emergency (Control of Second Hand Uniforms) Regulations, 1953,[15] restricting the sale or purchase of second hand uniforms.

The Emergency (Explosives) Regulations, 1953,[16] requiring permits for the sale or purchase of explosives.

All these restrictions were imposed as a result of bitter experience which cost the lives of loyal Africans as well as of Europeans, and there are indications at the end of the year 1953 that they are having the effect expected now that the necessary personnel are being recruited to enforce their provisions.

An interesting debate took place in May, 1953, on whether the state of affairs existing in Kenya amounted to "rebellion".[17] The reason for this was the desire to provide, in accordance with Section 69 of the Native Land Trusts Ordinance, for the forfeiture of land owned by those who were proved to have committed the acts which had given rise to the State of Emergency. The argument was inconclusive, but the desire to provide for forfeiture of land was met by the passage of the Forfeiture of Lands Bill in December. This Bill was introduced in fulfilment of an undertaking given by His Excellency the Governor in his speech when opening the Second Session of the Council in October, 1952, when he said:

> It is felt that some striking action should be taken against the few most villainous leaders of the Mau Mau movement. For this reason a Bill will shortly be introduced providing for the forfeiture of land held in the Kikuyu land unit by two classes of persons. First, those convicted of certain serious

offences connecting the offenders closely with the direction of Mau Mau movement, and, secondly, any still at large who may be declared subject to the provisions of the Bill—that is in practice the best known gang leaders now opposing the forces of law and order. In connection with this forfeiture of Mau Mau leaders' land I wish to make clear two points. The first is that the Government have no intention of taking action against land other than that of those I have already mentioned. The second is that the land which will be forfeit will be put to a public purpose—for example, it might be used for a clinic, for a school, or for agricultural experiment.[18]

With the passing of this Bill, which does not become an Ordinance until the Queen has signified her pleasure in the matter, the Council rose from its last sitting in 1953, and there remains nothing to add except to say that the normal working of the Council was very little disturbed by the fact that a State of Emergency existed, and only one Member, Mr. F. W. Odede, an African, was removed under the Regulations for the part he had taken in seeking to extend the scope of Mau Mau activities beyond the Kikuyu tribe.

[1] 53 *Hans.*, 213-224. [2] 56 *Hans.*, 128. [3] Government Notice 1528 of 1953. [4] 57 *Hans.*, 67-74. [5] Government Notice 1617. [6] Government Notice 638. [7] 57 *Hans.*, 186-7. [8] *Ibid.*, 191-2. [9] *Ibid.*, 192-3. [10] *Ibid.*, 194. [11] *Ibid.*, 243. [12] Government Notice 1735. [13] Government Notice 1399. [14] Government Notice 992. [15] Government Notice 1313. [16] Government Notice 1535. [17] 55 *Hans.*, 320-3. [18] 58 *Hans.*, 5-6.

XX. APPLICATIONS OF PRIVILEGE, 1953

1. At Westminster

By the Editors

Arrest of Member of another Legislature.—On 10th March, Mr. Fenner Brockway (Eton and Slough), referring to the recent arrest of Mr. Fanuel Odede, a Member of the Kenya Legislative Council, asked whether the arrest and detention, without charge, of a Member of a Colonial Legislature set up by the House and without full self-government was a matter coming within the cognisance of the House as a breach of Privilege.

Mr. Speaker replied that no possible question of the Privileges of the House could arise from these circumstances.[1]

Newspaper article written by a Member.—On 27th April, Mrs. Braddock (Liverpool, Exchange) called Mr. Speaker's attention to an article which had appeared on the previous day in the *Sunday Express*, entitled: "What a Baptism—By Patricia Ford, M.P.", which, she averred, contained some untrue statements relating to the accommodation set apart for lady Members. She quoted a passage from the article which ran:

There is even a room upstairs with a couple of beds, and the old stagers seem to get there first. One night I found both Mrs. Bessie Braddock and Dr. Edith Summerskill stretched out on them, and both snoring.

She denied that she had ever slept alongside the Member for Fulham, W. (Dr. Summerskill), and, indeed, that she had ever set foot in the room in question. She had, she said, no objection to jokes being made at her expense; she did, however, object to falsehoods.

Miss Bacon (Leeds, N.E.) confirmed the accuracy of Mrs. Braddock's statement, and stated to the House which Members had been present in the Ladies' Room on the occasion which the article had purported to describe.

Mrs. Ford (Down, N.), who had been first introduced into the House on 20th April, said that if she had offended Mrs. Braddock in any way, she apologised most wholeheartedly, and added that it was sometimes difficult to see in the dark.

Mr. Driberg (Maldon) asked Mr. Speaker whether, in giving his ruling, he would include some reference to the very strong tradition whereby Members refrained from making reference in public to happenings in the private rooms and parts of the House.

Mr. Speaker said:

As long as I have been an hon. Member it has been understood by hon. Members who may write for the newspapers or talk outside that they should maintain a certain reticence about what happens in the private apartments of the House. The House will also bear in mind that the hon. lady who wrote the article is a new Member. It is our custom to extend a good deal of indulgence to new hon. Members. I shall consider the matter further, but I say now that it has never been considered proper Parliamentary comment to disclose what happens in our own private apartments.[2]

On 28th April, Mrs. Ford made a personal statement. She realised, she said, that she had been indiscreet, and apologised humbly to the House, Mrs. Braddock and Dr. Summerskill. She said that the article had been based on a series of questions, and not written by herself. The final draft had been read to her over the telephone, and she had given her assent to it.

Mrs. Braddock and Dr. Summerskill both accepted Mrs. Ford's apology; the former asked Mr. Speaker whether, in view of the latter part of Mrs. Ford's statement, he thought that there was a *prima facie* case of Privilege:

Mr. Speaker replied:

I have read the article, and in view of what we have heard today about its origin, and the fact that the hon. lady the Member for Down, North, has apologised to the House, I think the House will accept that apology, but it appears that the article was not actually written by her in the usual sense of that term. Taking everything into account, I feel that I must rule that here, there is a *prima facie* case, and if the hon. lady the Member for Liverpool Exchange, wishes to move a Motion, I shall be prepared to permit her.[3]

Mrs. Braddock, seconded by Dr. Summerskill, then moved that the matter of the complaint be referred to the Committee of Privileges, which Motion was agreed to.

Mrs. Braddock then asked Mr. Speaker whether he would rule that any comment (as opposed to report) made in any other organ of the Press while the matter was being investigated would receive the condemnation of the House. Mr. Speaker said that he could not give a ruling in those wide terms, but thought that journalists were well aware of the views of the House on these matters.

Mr. Baxter (Southgate) then called Mr. Speaker's attention to a possible breach of privilege by Mr. Driberg in an article written by him in *Reynolds News*. It appearing that the article had been published two days previously, Mr. Speaker ruled that the matter had not been raised in time for it to be granted precedence over other business.

The Committee of Privileges made their Report to the House on 12th May;[1] to it was appended the Minutes of Evidence taken from Mrs. Ford herself, Mr. Sidney Rodin and Mr. Charles Wintour (both employed by the *Sunday Express*, the latter being Assistant Editor).

The Committee found that the article had been founded on an interview given by Mrs. Ford to Mr. Rodin, who had asked her a series of typewritten questions. During the interview (which was somewhat interrupted) Mrs. Ford had stressed the fact that she was a new Member and asked that she should be " kept right ". A draft of the article had been shown to her, which she had read and corrected; on the same night Mr. Rodin had telephoned her at her home in Cheshire and read over the amended article to her; she had made a few further amendments, and agreed to the appearance of the article as amended.

Mr. Rodin and Mr. Wintour had apologised most profoundly through the Committee to the House and to Mrs. Braddock; it was, however, clear from their evidence that they considered that the article fairly reflected the views and expressions of Mrs. Ford. Mr. Wintour had, moveover, caused a photograph of Mrs. Braddock, with the caption beneath it, to be changed in the later editions of the *Sunday Express* that day, " as he did not wish to pinpoint her or hold her up to ridicule ".

The Committee's Report concluded:

> It is not the function of your Committee to express any opinion upon the taste of the article, but only to decide whether a breach of privilege has been committed. While all reports of Proceedings of the House published without its authority amount to breaches of Privilege, in the normal course the House waives its privileges in this matter. In this particular case, as Mrs. Ford has herself apologised to the House, and as an apology has been made to the House and to Mrs. Braddock through your Committee for what was written in the article, your Committee recommend that no further action be taken in the matter.

Dispute between a Member and his Constituents.—On 1st May,

Lord Malcolm Douglas-Hamilton (Inverness) informed the House of a report in the *Scotsman* that the Chairman of the Inverness-shire Unionist Association (with which body Lord Malcolm had recently severed his connection) had announced that as long as Lord Malcolm continued as a Member, the Association would "continue to handle all matters raised by constituents", and arrange for the personal attention to such matters in the House of another Scottish Member.

He was not aware that any Member had willingly consented to usurp his duties. He submitted that the assumption that a caucus might arbitrarily arrogate to itself the duties of a Member, by taking over his correspondence and inviting another Member to deal with his constituency matters, made "a monstrous mockery of the entire Parliamentary process", and asked whether it constituted a *prima facie* breach of Privilege.

Mr. Speaker gave the following ruling:

> I have looked at this passage and I cannot find anything in the words to which my attention is directed which is an affront against the House. It must always be borne in mind that the Privilege is that of the House. Breaches of Privilege are breaches of the Privilege of the House as a whole and do not necessarily include all statements about hon. Members. It seems to me that all that is contained in this passage describes some dispute between the hon. Member and his constituents or a branch of them. I do not think that I can rule that there is a *prima facie* case of breach of Privilege of the House, though it is open to the hon. Member to put down a Motion to that effect.[5]

A Motion in the name of Lord Malcolm Douglas-Hamilton and nearly 100 other Members was accordingly placed on the Order Paper, as follows:

> That the statement of the Chairman of the Inverness-shire Unionist Association contained in the newspaper *The Scotsman* of 30th April, 1953, to the effect that all constituency matters should be dealt with by the Association, and offering the personal attention of another Scottish Member of Parliament to matters which are the duties of the sitting Member for Inverness-shire, constitutes an affront to this House; and that the statement be referred to the Committee of Privileges.[6]

On 7th May, Lord Malcolm pressed the Leader of the House (Mr. Crookshank) to allow time for the Motion to be debated. This request was not granted, in spite of contentions by several Members that such a Motion should not be allowed to remain indefinitely on the Order Paper. The matter was summed up in the following observation by Mr. Speaker:

> In my experience, if there is a matter of this sort, it is dealt with as soon as practicable, and either some accommodation is reached or the Motion is withdrawn. Of course, these matters are relative. All matters of business are relative, and it does not lie in my hands, thank goodness, to arrange the business of the House.[7]

Letter circulated to Members.—On 4th November, Mr. Dryden Brook (Halifax) asked Mr. Speaker for a ruling on the following

passage from a letter circulated that day to Members by the Central Milk Distributive Committee:

If pressure must be brought to bear in order to get fair play, it should be borne in mind that Milk Distributors have access to the electorate in every household throughout the country and the trade would not hesitate to use this means if it felt that a Producers' Monopoly was likely to be restored.

Observing that the Committee was not a political organisation, Mr. Brook complained that it was drawing attention to the fact (i) that the votes of its numerous employees were open to influence, and (ii) that those employees might use their access to almost every home in the country in order to influence the votes of the public. He suggested that this constituted a *prima facie* case of a breach of Privilege.

Mr. Speaker replied:

After having consulted the precedents, I think that the only Ruling that I can give is that while the language used in this circular is thoroughly reprehensible and is, I think, calculated in the minds of most hon. Members to produce an effect opposite to that which its authors intend, yet, following Mr. Speaker Brand in a similar case, while giving my opinion and I am sure the opinion of most hon. Members on this matter, I cannot rule that it is *prima facie* a breach of Privilege.[8]

Service of a subpœna on a Member.—On Tuesday, 1st December, Mr. Harold Wilson (Huyton), in a personal statement, informed the House that on the previous Friday a subpœna had been served on him to attend at the High Court at 10.30 on Monday, to give evidence in a case of which he had no knowledge and with which he had no direct or indirect connection. Believing that compliance with the subpœna would be inconsistent with his duties as a Member, he had approached the Speaker, who had sent a letter to the judge trying the case. The subpœna had accordingly been set aside.

He submitted that Members were entitled to protection against the issue of frivolous subpœnas; being advised that there was a widespread ignorance in the legal profession about the privilege of hon. Members in the matter of subpœnas, he asked Mr. Speaker for a declaratory statement.

Mr. Speaker said:

I sent a letter to the learned judge in charge of the case asking if he would intervene to postpone or set aside the subpœna. This would, I said, obviate the necessity for this House to take the formal and more cumbrous step of refusing leave of absence from the House for the right hon. Gentleman to attend the court that day, in view of the fact that Members of both Houses are, by law and custom of Parliament, exempted from attendance as witnesses during the Sessions of Parliament. I express no opinion whatsoever about the case which is being tried and about which, indeed, I know nothing. I only acted as I did to protect the right hon. Gentleman and to preserve the privileges of this House.[9]

On 3rd December Mr. Speaker read out to the House a letter of

apology from the solicitors who had served the subpœna on Mr. Wilson.[10]

Imputation of improper motives.—On 10th December, Mr. Arthur Lewis (West Ham, N.), called Mr. Speaker's attention to an article which had appeared on the previous day in the *Daily Worker*. This article, which was headed "M.P.'s Vote Money into their Own Pockets", referred to the Housing Repairs and Rents Bill then before the House, and contained the sentences:

> Many Tory M.P.s will get a direct, personal cash advantage if they succeed in making their Rent Bill law. At least 20 Tory M.P.s are or have been directors of property or estate companies which may be expected to increase their already handsome profits if the Bill goes through. At least seven others are directors of investment or insurance companies which have substantial assets invested in house property. If rents go up their holdings will be worth more.

The article, Mr. Lewis said, mentioned some 24 Conservative Members by name. He submitted that if the statements in the article were untrue, the author was guilty of a breach of Privilege. If, however, the statements were true, the Members themselves were guilty of such a breach in that they had voted on the Second Reading of the Bill without disclosing their financial interest.

He concluded by saying that he had not seen the article until 5.30 on the previous day, and was therefore bringing the matter up at the first opportunity.

Mr. Speaker said:

> I find a past instance in which this particular paper was concerned when my predecessor allowed the same interval of time as has elapsed between the time the hon. Member for West Ham, North (Mr. Lewis), noticed this matter and today. So I say that the hon. Member is not barred on the question of time, though I draw the attention of the House to this very important rule of our procedure that, in order to gain precedence over the Orders of the Day in matters of Privilege, the matter must be brought up at the earliest possible moment.
>
> I have listened to the hon. Member and have looked at the article concerned and I am prepared to rule that it constitutes a *prima facie* case of breach of Privilege.[11]

The matter of the complaint was thereupon, on a Motion by Mr. Lewis, committed to the Committee of Privileges.[12]

On 14th December, the Committee reported as follows:

> Your Committee have carefully considered the passages of the publication which were the subject of complaint. The publication imputes certain motives to Members of the House in the exercise of their votes, a matter the truth of which would be difficult to ascertain, and upon which the Committee of Privileges is not appropriate to pass judgment. It is defamatory of Members of the House in their capacity as Members and is therefore, in the opinion of your Committee, a breach of Privilege. But, as your Committee has observed before, it is not every such breach of Privilege which is worthy of occupying the time of the House, and your Committee recommends that no further time should be occupied in the consideration of this offence.[13]

2. Australian Commonwealth: House of Representatives

Contributed by the Clerk-Assistant of the House of Representatives

Member ordered to withdraw from House—Contempt of House.— On 13th March, a Motion was made that a Member speaking be not further heard. While Mr. Speaker was proceeding to put the question, another Member (Mr. Curtin, Opposition) interjected after a warning had been given from the Chair, and was ordered by Mr. Speaker to withdraw from the House during the remainder of that day's sitting under Standing Order No. 303. Mr. Speaker then ruled that the Member must withdraw from the building and directed the Serjeant-at-Arms to escort him from the premises. Mr. Curtin accordingly withdrew.[14]

Standing Order No. 303 provides that the Chair shall order a Member whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of the day's sitting and that the Serjeant-at-Arms shall act on orders received. The Member shall not return during the same sitting, except by permission of the Chair.

The Leader of the Opposition moved dissent from the ruling and submitted that Mr. Speaker had exceeded his jurisdiction by excluding the Member from the building. Mr. Speaker drew the attention of the House to a previous occasion[15] on which he had ruled that a Member suspended from the service of the House was suspended from using the building or any facility therein; a dissent from his ruling which had then been moved had not been upheld by the House.

In the course of the ensuing debate on the dissent Motion, Members dealt with the meaning of the word "House" used in the Standing Order and referred to the practice of the United Kingdom House of Commons declared in *May*.[16] After closure, the Motion of dissent was negatived on division on party lines.

Later that day,[17] Mr. Speaker reported to the House that during the lunch suspension he had seen in King's Hall the Member (Mr. Curtin) who that morning had been excluded from the building. The presence of the Member was a contempt of the House. On the Motion of the Leader of the House (the Vice-President of the Executive Council), consideration of the matter was deferred until the following sitting day.

Immediately after Prayers on the next sitting day, 17th March,[18] Mr. Speaker made a Statement alleging that contempt of the House had been committed by the Member in entering King's Hall during the period of withdrawal mentioned in Standing Order No. 303 after having been directed to leave the premises. Mr. Speaker referred to the declaration in *May*,[19] to the effect that "disobedience to the orders of either House . . . or contravention of any rules of either

House, is a contempt of that House". He stated that King's Hall is administered by Mr. Speaker with the President of the Senate.

Mr. Curtin then rose in explanation, in the course of which he said that after leaving the Chamber he heard that dissent had been moved to Mr. Speaker's ruling. Before the dissent had been decided, he entered the Senate side of the building, believing that Mr. Speaker's authority under Order No. 303 did not extend to that area. Shortly after Mr. Speaker had seen him, he received through his Whip a message from the Leader of the party that the House had not upheld the dissent, and he immediately left the building. He did not intend any contempt of the House or of Mr. Speaker's authority, and he asked the House to accept his explanation.

The Leader of the House then moved that the House is of opinion that contempt of its ruling and authority had taken place by the Member for Watson (Mr. Curtin). The Leader of the Opposition submitted that the House should reject the Motion. A senior Minister and the Deputy Leader of the Opposition debated the question and the Leader of the House replied. The question was then put, and passed on division on party lines.

Immediately the result of the division had been declared by Mr. Speaker, Mr. Curtin rose and made an apology to the House. On the Motion of the Leader of the House, the apology was accepted.

3. India: House of the People

Contributed by the Secretary of the Lok Sabha

Arrest of a Member not necessarily a breach of privilege.—On 11th May, Dr. Mookerjee was arrested by the Government of Jammu and Kashmir State for entering that State in defiance of a ban on his entry. The Chief Secretary of the State Government immediately intimated the fact of his arrest to the Deputy Speaker, which was duly read out by him to the House of the People on 12th May.

On 13th May, a question of Privilege was raised in the House on the ground that it was the inherent right of every Member of Parliament to visit any State to "see things for himself and report to Parliament or fight for any grievances there", and that "there is no territorial limitation with regard to a Member of Parliament that he can only represent the grievances of his own constituency and of no other part". The Deputy Speaker observed that there can be no special Privilege in the case of a Member of the House as opposed to any other person and that no discrimination nor privilege of freedom from arrest was granted to a Member. In the usual course Dr. Mookerjee had been arrested in accordance with the law of the land, and all that was required was that the executive authority must intimate the fact of the arrest to the House, which had been done. It was for the Government of a particular State to decide

whether permitting any Member or any other person would jeopardise the law and order situation there, and the House could not sit in judgment over the action of a State Government which had been taken under the provisions of existing law.

He therefore ruled that no question of Privilege was involved.[20]

4. Bombay: Legislative Assembly

Contributed by the Secretary of the Legislature

1. Reflections upon the Assembly by a newspaper.—One of the Members of the Legislative Assembly had asked, on 26th March, a Starred Question about "Granting of Liquor permits to Magistrates and Judges". The question was answered in the House by the Minister in charge. The Member, in his supplementary questions, asked for the names of the Judges to whom liquor permits were granted. This was also replied to by the Minister, who gave the names as requested.[21] On this issue the Editor of *The Times of India* published, on 28th March, an editorial in that newspaper under the caption "Contemptible", in which he criticised the conduct of the Member and the Minister and cast aspersions on the House. The Member concerned took exception to the editorial, and, on 30th March, raised the question of breach of his privilege and also of the House as a whole.[22] The question was referred to the Privileges Committee. The Editor of *The Times of India* was summoned to appear before the Privileges Committee by the Chairman of the Committee and was also allowed to represent himself by an attorney and an advocate. The Privileges Committee had also the assistance of the Advocate-General, Bombay. The Committee, in a Report dated 13th April, held that the criticism in the editorial exceeded the bounds of decency, reason and fair comment, as it attributed motives to the Member in particular, and also to the House in general, and was calculated to undermine the prestige and the dignity of the House. It held the Editor, Printer and Publisher of *The Times of India* guilty of contempt of the House and therefore guilty of breach of privileges of the Bombay Legislative Assembly.

The Report was adopted by the Legislative Assembly at its meeting held on 16th April. A Motion was passed to the effect that until the Editor of *The Times of India* appeared before the bar of the House and tendered an unconditional apology in such form and published the same in such manner as might be approved by the Speaker, the Press facilities given to the said paper in the House should be withdrawn.[23] The Press facilities given to the newspaper, such as the Pass for entrance into the Press Gallery of the Assembly Hall and the supply of copies of circulars, amendments and agenda pertaining to Legislative Assembly, have accordingly been withdrawn.

2. Arrest of a Member without warrant.—Shri R. S. Patel, Member of the Legislative Assembly representing Pardi, was arrested at

his residence in Bombay by the Bombay Police, at the instance of the District Superintendent of Police, Surat, on 13th September, when the session of the Assembly was in progress. The Bombay Police, immediately after his arrest, sent a telegram to the Hon. the Speaker of the House. The telegram mentioned the fact of the arrest of the hon. Member and also stated that the arrest was under charges falling under Sections 143, 147, 149, 447, 427 and 117 of the Indian Penal Code. The Member also sent a telegram to the Hon. the Speaker saying that he was at Pardi on 1st September to study the situation, as it was his constituency, and that his arrest was effected in order to prevent him from representing his electorate in the Assembly, and he sought intervention of the Hon. the Speaker for safeguarding his rights as a Member.[24] A Member of the House thereupon raised a question of Privilege of the Member, arising out of his arrest without warrant, and also of the House. The question whether, under the sections cited, a Member of the House can be arrested without warrant, was then referred to the Privileges Committee.[25] The Committee examined this question, and, in a Report dated 19th December, held that the arrest of the Member was made under the ordinary law on charges involving offences under the Indian Penal Code for which a person is liable to be arrested without warrant, and that a Member of the Assembly, as any other member of the public, can be arrested without warrant on charges in respect of which arrest can be made without warrant under the law, and that therefore there was no breach of privilege. This Report has yet to be considered by the Assembly.

5. Uttar Pradesh: Legislative Assembly

Contributed by the Secretary of the Legislative Assembly

Contempt of the Chair.—On 4th March, after question hour, Shri Raj Narain, Leader of the Opposition, asked for the consent of the Chair to move an adjournment Motion regarding the alleged forcible removal of the hunger striking teachers from the precincts in front of the Council House by the Police. The Speaker held the Motion in order and gave the required consent under Rule 68 and called upon Shri Raj Narain formally to obtain leave of the House under Rule 71 (1). Shri Raj Narain then read his Motion and sought the permission from the House. The Home Minister objected to leave being granted. The Speaker thereupon asked Members in favour of consent being given to stand in their seats in order to enable him to find out if there was a support of 36 Members as required by the Rules for granting leave.

At this stage Shri Narain Dutt Tewari requested the Chair to give his consent under Rule 221 to enable him to move the suspension of Rule 71 which necessitated that at least 36 Members should rise for leave for the moving of such a Motion. The consideration of

this question of suspension of Rule was refused by the Speaker as no business other than asking and answering of questions could without permission of the Chair be transacted under Rule 153 (3) on a Budget day. The Speaker, however, observed that the matter could be taken up after 5 p.m., after the discussion on demands for grants had terminated. Shri Raj Narain, however, insisted that the Motion of Shri Narain Dutt Tewari should be admitted, as it was not possible for his party to get 36 Members to rise in their seats. The Speaker reiterated that it was not possible at that stage as it was a day fixed for voting on demands, and repeatedly pointed out that it was not the proper time for Shri Raj Narain to obstruct the business of the House, and remarked that when he could not get 36 votes, how could he expect to get the support of the majority of the House, *i.e.*, about 150 members, for passing Shri Narain Dutt Tewari's Motion which would facilitate leave for adjournment Motion. Shri Raj Narain was asked to sit down four times by the Speaker, but he did not resume his seat, even when a point of order was raised. The Chair then asked him to leave the House, but he did not do so. The Chair repeated the same twice over, but Shri Raj Narain remained standing and continued speaking. The Speaker then pointed out to the House the intransigent attitude adopted by Shri Raj Narain and ordered his removal from the Assembly Hall with the use of minimum force. The Police was accordingly called, but Shri Raj Narain squatted on the floor of the House and had to be bodily lifted by the Police from the Assembly Hall.

Shri Ram Narain Tripathi, Deputy Leader of the Opposition, followed the more or less similar line. He began by repeating the request of Shri Raj Narain. Shri Tripathi was also asked, first to take his seat, but he did not obey and continued to speak. The Speaker remarked whether he would also follow Shri Raj Narain, to which Shri Tripathi replied in the affirmative. He was, therefore, also forcibly ejected from the Assembly Hall under the Speaker's orders.

Shri Jagannath Mal, another Member of the Opposition, then rose and repeated almost the same story. He also began by reiterating the request of Shri Raj Narain, and consistently refused to obey the orders of the Speaker to discontinue his speech and to sit down. He was also ejected from the Hall. Shri Jagannath Mal used language which attributed partiality to the conduct of the Chair in the House.

Soon after the ejectment of Shri Raj Narain and Shri Ram Narain Tripathi, the Speaker referred to their defiant attitude and said that their behaviour in the House was evidently a breach of Privilege of the House. He therefore referred their cases to the Privileges Committee for examination, investigation and report under Rule 67 of the U.P. Legislative Assembly Rules.[26]

On the next day (5th March) the Speaker referred in the House

to the resolution of Shri Ram Prasad Deshmukh regarding action to be taken against the 3 Members on their disorderly behaviour.[27] He ordered that the Committee of Privileges would also examine, investigate and report on the conduct of Shri Jagannath Mal on 4th March.

The Privileges Committee submitted its Report to the House on 27th March,[28] and made the following recommendations to the House:

> The Committee are, therefore, of the opinion that Shri Raj Narain, Shri Ram Narain Tripathi and Shri Jagannath Mal have committed breaches of privilege and have made themselves liable for punishment under the powers conferred on the House by the Constitution and the Rules of Procedure. The Committee, therefore, recommends to the House that Shri Raj Narain and Shri Ram Narain Tripathi be suspended from the service of the House till the termination of the current sitting of the House. In the case of Shri Jagannath Mal, in view of his graver offence in attributing partiality to the Honourable Speaker, the Committee decides that he should be suspended from the service of the House till the termination of the present session of the Assembly.[29]

The House considered the Report of the Privileges Committee on 30th March, and accepted the findings of the Committee, and, keeping in view the explanations by the accused Members, suspended Shri Raj Narain from the service of the House for the remaining days of that sitting (*i.e.*, up to 2nd April), and Shri Jagannath Mal for the remaining period of the session; and taking into consideration the statement of Shri Ram Narain Tripathi, which he had made in the House that day, did not deem it fit to pass any orders in his case.[30]

Shri Raj Narain filed a writ of mandamus in the Lucknow Bench of the High Court of Judicature at Allahabad. A bench of the High Court, consisting of Mr. Justice Sapru and Mr. Justice Mukerji, considered the writ application and issued notices to the Speaker and the Secretary to appear in the High Court on 16th April. The Advocate-General, assisted by the standing Counsel, represented the Speaker and the Secretary. The case was heard by the Bench on 16th, 17th, 20th, 21st and 22nd April, and in a judgment on 7th May, the writ application was dismissed with costs. Shri Raj Narain filed an application to appeal in the Supreme Court of India against the decision of the High Court. The application was considered on 30th September by a Bench of the High Court and was granted.

6. Kenya: Legislative Council

Contributed by the Clerk of the Legislative Council

Reporting of a debate by a newspaper.—On 29th July, a debate took place in Committee of Supply of Kenya Legislative Council on an item in Supplementary Estimates of Expenditure entitled "Inter-

racial Kindergarten School", in which the remark was made by Mr. Maconochie-Welwood (European Elected Member for Uasin Gishu):

> We do not want a debate on this matter in the Committee of Supply, nor do we want, by agreeing to this Estimate, to accept the principle of inter-racial schools.[31]

On the following day an article appeared in Kenya's leading newspaper, the *East African Standard*, under the headline "Inter-racial School to be opened in Nairobi", containing a reference to the fact that the Council had approved the setting aside of money to build the school. It then went on to refer to an interview with the Director of Education, given immediately after the debate on the matter, in which he is quoted as saying:

> We think it is a very valuable experiment in inter-racial education, but it has no real chance of success unless the job is done properly. The only way is to house the school in a decent building and provide properly qualified staff. In other words, to make the facilities equal in every way to those of, say, a European school.

The article closed with a further reference to the debate which took place in the Committee of the Council, to the effect that the Member for Education "pointed out that the school was an experiment and no similar institution would be developed without further discussion".

Mr. Maconochie-Welwood immediately raised the matter in Council, claiming that the article was a report suggesting that a prolonged debate had taken place, and submitted that a breach of privilege had taken place either in that the report amounted to a false report or that the Director of Education, who was a Government-nominated Member of the Council, had continued the debate outside the Council.

A copy of the article complained of was examined by the Speaker, who ruled—

> Taking the thing as a whole (*i.e.*, the article or news item), it looks to me that there is a *prima facie* case of breach of privilege for a false report of the proceedings of this Council.[32]

Whereupon Mr. Maconochie-Welwood moved for a Committee to examine for a breach of privilege. This Motion was accepted.

On further consideration, however, Mr.Speaker sought to correct the impression that the Council claimed to have privilege on the same basis as the House of Commons, and with the permission of the Council the Chief Secretary moved—

> That the resolution passed this morning relating to the appointment of a Committee of Privilege be rescinded and that the Sessional Committee be required to inquire into and report to Council on the circumstances in which the report of the proceedings in a Committee of the Council which appeared in the *East African Standard* of the 30th July, 1953, under the heading "Inter-

racial School to be opened in Nairobi" was made; and that for the purposes aforesaid the Sessional Committee is hereby authorised in pursuance of section 9 of the Legislative Council (Powers and Privileges) Ordinance, 1952, to order persons to attend before it and to produce documents as provided in the said section.

and the Council resolved accordingly.

The Sessional Committee met on three occasions to consider the matter and took evidence from the Reporter, the Editor and the News Editor of the newspaper concerned, as well as from the Director of Education. As a result, they came to the following conclusions:

1. That the article was not a false report of the proceedings of Legislative Council.

2. That Mr. Wadley's remarks might reasonably have been interpreted by some readers as having been made in Legislative Council.

3. That it was unfortunate, having regard to the fact that the article opens with reference to a decision taken in the Council and closes with a report of the debate, that it was not made clear that Mr. Wadley's remarks were made in an interview as distinct from in Legislative Council.

4. That the statement made by Mr. Wadley cannot be regarded as a continuation of the debate, but was a factual statement except in so far as he was answering questions.

The Committee noted with satisfaction that the newspaper staff possessed a very proper sense of responsibility, both as regards the correct reporting of Legislative Council debates and as regards their duty to the public, and they were satisfied that there was no intention to mislead the public in this particular instance. They were of the opinion, however, that it was desirable that, in any article containing a reference to proceedings of Legislative Council, a distinction should be made to indicate what was in fact a report on such proceedings and what took place outside the Council.

The Report was laid on the Table of the Council on 6th October and debated on 10th December.[33] In the course of this debate the Attorney-General made the following points:

1. The evidence led to the conclusion that the facts were correctly reported and that therefore there was no false report.

2. The arrangement of the facts was a matter for criticism.

3. After a debate in Legislative Council, Members should not go outside and comment on points of issue raised in the debate or offer explanations on the issues raised in the debate which they might well have put forward in the debate. But it was not correct to say that if someone in Legislative Council expresses the hope that there will be no debate in Council, thereafter no one in the Government —heads of departments, or anyone else—should refer to the subject until such time as the Member of the Council who expressed the desire that there should be no debate should see fit to bring the subject before the Council again.

The Council adopted the Report without a division.

7. Trinidad and Tobago: Legislative Council

Contributed by the Clerk of the Legislative Council

Premature Publication of a Report.—On 13th March,[34] after the Report on the Caura Dam had been laid on the table of the House by the Colonial Secretary (Mr. Maurice Dorman), the Member for Caroni North (Mr. R. Kumar) rose to complain that copies of the Report had been handed to the local press by the Colonial Secretary, or an officer of his department, before copies had been circulated to Members, and he produced a special edition of the *Port of Spain Gazette* to show that the contents of the Report had already appeared in the Press.

Mr. Kumar regarded this as a breach of privilege and moved that the matter be referred to the Committee of Privileges for them to decide whether it was a breach of privilege for documents to be handed to the Press before they were made available to Members of the Council and for the Press to publish such documents before they had been laid on the table of the House.

After a short debate, the House, on a Motion moved by the Attorney-General (Mr. de Lisle Inniss) and seconded by the Member for St. Patrick West (Mr. T. U. B. Butler), agreed to postpone debate on the Motion to the next meeting of the Council to afford the Speaker an opportunity to study the matter, not before Mr. Speaker had made it clear to Members, however, that he had a right to defer his ruling, if he thought fit, until such time as he was able to study the matter.

At the next sitting of the Council, which was held on 20th March,[35] before Mr. Speaker gave his ruling, the Colonial Secretary was permitted to make a statement relative to the complaint made by Mr. Kumar.

In this statement the Colonial Secretary admitted that he did issue to the two Editors of the daily press, under assurances of confidence, two copies of the Caura Report and a further copy to the Editor of a weekly, under similar assurances, on the Wednesday and Thursday before the sitting of the Council when copies of the Report were circulated to Members. The Colonial Secretary stated, *inter alia*, that the Caura Report was not a Report of the Council nor of any Committee of the Council. The Report was that of a Commission of Enquiry appointed by the Governor under the Commissions of Enquiry Ordinance, and under the new constitution it was the responsibility of the Governor in Executive Council to decide when or how, or in what circumstances, a report of this nature should be published. In this case, the Governor in Council decided that, in response to questions asked in the House, the Report should be laid before the House. In the circumstances, he considered the Report analogous to a Command Paper in the United Kingdom.

The Colonial Secretary further explained that the Special Edition of the *Port of Spain Gazette* which carried the Report, and which was produced by the Member for Caroni North at the last meeting of the Council, was not put out for sale until a considerable time after the Report had been laid on the table of the House, and he read a letter from the Editor of that newspaper which showed that a copy of the Special Edition was handed to the Editor of the Weekly referred to above, on condition that it be treated confidentially until the Report had been laid before the House. The Editor of the *Port of Spain Gazette* pointed out further that he was aware that the Editor of the Weekly was in possession of a copy of the Report and that he (the Editor of the Weekly) had repeatedly requested his firm, they being the printers of the Weekly, to hold over matter in type from the *Port of Spain Gazette* for production in the Weekly, and it was presumed it was for this purpose that he had requested a copy of the Special Edition. Further, the Editor of the Weekly had since admitted to him (the Editor of the *Port of Spain Gazette*) that he had sent a copy of the Special Edition to the Member for Caroni North.

The Colonial Secretary also read a statement made by one of the Ushers in the Council Chamber. This statement disclosed that on the morning of the sitting of the Council held on 13th March, as the Report was laid on the table by the Colonial Secretary, the Usher was given a copy of the Special Edition of the *Port of Spain Gazette* to deliver to Mr. Kumar. The Colonial Secretary concluded his speech as follows:

> The Government, Sir, is concerned that reports on matters of public interest should be made available to the public without avoidable delay, but is equally anxious that nothing should be done derogatory to the dignity of the House. (Applause.)

Mr. Speaker then gave his ruling:

> With regard to the first complaint that was made, I have no hesitation in saying that my ruling is that no breach of privilege was committed by the Hon. the Colonial Secretary (cheers), and that in fact he acted in accordance with the practice which, as far as I know, has existed in the House of Commons, at any rate since 1909.
>
> With regard to the second matter of the complaint—that is, publication by the Press—as far as my researches have gone it does not appear that the House of Commons has treated publication by the Press of a document of this nature, a Command Paper, before it was in the hands of hon. Members, as a breach of privilege. It is a regrettable fact if it does occur, but that does not make it a breach of privilege.
>
> But in this particular case, in my opinion, the position is stronger, because I do not think anyone could draw any other conclusion from the facts related to this Council by the Hon. the Colonial Secretary than that, although the newspaper did in fact print the Report before it came into the hands of Members, the newspaper or those connected with it never intended to and did not in fact publish it in the sense of putting it out for sale until after the

Report had been laid on the Table of this House. And, if that is so, then it is obvious that no question of breach of privilege can arise.

[1] 512 *Hans.*, 1128. [2] 514 *Hans.*, 1760-2. [3] *Ibid.*, 1973. [4] H.C. 171 (1952-53). [5] 514 *Hans.*, 2501-3. [6] 515 *Hans.*, 572. [7] *Ibid.*, 572-7. [8] 520 *Hans.*, 150. [9] 521 *Hans.*, 958. [10] *Ibid.*, 1287. [11] *Ibid.*, 2190. [12] *Ibid.*, 2187-91. [13] H.C. 31 (1953-54). [14] *Hans.*, 13.3.53, pp. 1045-56. [15] 208 *Hans.*, 4803-9. [16] 15th ed., p. 452. [17] *Hans.*, 13.3.53, pp. 1060-2. [18] *Hans.*, 17.3.53, pp. 1121-30. [19] 15th ed., p. 111. [20] H.P. Deb. 13.5.53. [21] 23 *Hans.*, 1622-3. [22] *Ibid.*, 1708-11. [23] *Ibid.*, 2569-2638. [24] Report of Privileges Committee, p. 7. [25] *Ibid.*, pp. 7-8. [26] U.P. Leg. Ass. Proc., CXX, pp. 13-20. [27] *Ibid.*, pp. 80-1. [28] *Ibid.*, CXXII, pp. 261-5. [29] *Ibid.*, pp. 309-19, Annexure "Cha." [30] *Ibid.*, CXXIII, pp. 22-80. [31] LVI *Hans.*, 230. [32] *Ibid.*, 244. [33] LVIII *Hans.*, 1032-44. [34] *Hans.*, 1952-53, pp. 1066-81. [35] *Ibid.*, pp. 1105-38.

XXI. MISCELLANEOUS NOTES

1. Constitutional

Royal Style and Titles.—(1) *Enactments in the Commonwealth:* Prior to Her Majesty's Coronation, Legislation was enacted in a number of Commonwealth Countries to amend the Royal Style and Titles. The terms of the Title adopted in each country are as follows:

(i) *United Kingdom:* Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith. (1 & 2 Eliz. 2, c. 9: the title was not contained in the text of the Act, which authorised a proclamation to be made.)

(ii) *Canada:* Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith. (1 & 2 Eliz. 2, c. 9.)

(iii) *Australian Commonwealth:* Elizabeth the Second, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith. (Act No. 32 of 1953.)

(iv) *New Zealand:* Elizabeth the Second, by the Grace of God of the United Kingdom, New Zealand and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith. (Act No. 2 of 1953.)

(v) *Union of South Africa:* Elizabeth II, Queen of South Africa and of Her other Realms and Territories, Head of the Commonwealth. (Act No. 6 of 1953.)

(vi) *Ceylon:* Elizabeth the Second, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth. (Act No. 22 of 1953.)

Proclamations giving effect to this legislation were issued simultaneously on 29th May in London, Ottawa, Canberra, Wellington, Pretoria and Colombo. A proclamation was also made on the same date, but without preliminary legislation, in Karachi, setting forth the following Royal Style and Title for Pakistan:

Elizabeth the Second, Queen of the United Kingdom and of Her other Realms and Territories, Head of the Commonwealth.

(2) *Regnal Number:* On 15th April, the Prime Minister, Mr. Winston Churchill, was asked in the House of Commons by Lt.-Col. Elliot (Kelvingrove):

Whether, in advising the Sovereign to assume the title of Elizabeth II, he took into consideration the desirability of adopting the principle of using whichever numeral in the English or Scottish lines of Kings and Queens happens to be the higher?

The Prime Minister replied:

The decision to assume the title of Elizabeth II was of course taken on the advice of the Accession Council and the form of the proclamation was approved by Her Majesty's Government.

Since the Act of Union the principle to which my rt. hon. and gallant Friend refers has in fact been followed. Although I am sure neither the Queen nor her advisers could seek to bind their successors in such a matter, I think it would be reasonable and logical to continue to adopt in future whichever numeral in the English or Scottish line were higher. Thus, if, for instance, a King Robert or a King James came to the throne he might well be designated by the numeral appropriate to the Scottish succession, thereby emphasising that our Royal Family traces its descent through the English Royal line from William the Conqueror and beyond, and through the Scottish Royal line from Robert the Bruce and Malcolm Canmore and still further back. Her Majesty's present advisers would for their part find no difficulty in accepting such a principle. From this it naturally follows that there should not in their view be any difficulty anywhere in acknowledging the Style and Title of Her present Majesty.

(514 *Hans.*, c. 199.)

United Kingdom (Coronation Oath).—On 25th February the Prime Minister (Mr. Winston Churchill) announced to the House that it was not proposed to introduce legislation in order to change the terms of the Coronation Oath. His statement was as follows:

The terms of the Coronation Oath were first prescribed by the Act 1 William and Mary, chapter 6. Since then its terms have been changed at least five times. On one occasion only has the change had legislative sanction, namely the change which was introduced as a result of the Act of Union with Scotland. The Treaty of Union had provided that in Scotland the religion professed by the people of Scotland should be preserved to them and confirmed by every King on his accession, and it was thought proper that similar provision should be made for the protection of the English Church in England. The Coronation Oath was altered and enlarged accordingly.

For the many subsequent changes, large or small, which have been made in the terms of the Oath there was no legislative sanction. They were made at various times, and, in particular, after the Act of Union with Ireland, after the Disestablishment of the Irish Church, and also after the passing of the Statute of Westminster. On the last occasion the question whether the changes that were necessary to meet the new constitutional position could be made without an Act of Parliament was carefully considered, and the Lord Chancellor and the Law Officers of the day advised that they could.

I am advised by my noble Friend the Lord Chancellor that this opinion was clearly correct, and that the changes now proposed, which are, perhaps, less

substantial than those made in 1937, but are required to meet the new constitutional position created by the Indian Independence Act, 1947, and other statutes, can also be made without legislative sanction.

Her Majesty's Government propose to follow this long line of precedents. To accept the view that changes in the terms of the Oath which are necessary to reconcile it with a changed constitutional position cannot be made except with the authority of an Act of Parliament would be to cast doubt upon the validity of the Oath administered to every Sovereign of this country since George I.

If, as I am advised, the Coronation Oath can be lawfully administered in the terms now proposed, no useful purpose would be served by legislation. It must be remembered that at Westminster the Queen will be crowned Queen not only of the United Kingdom, but also of other self-governing countries of the Commonwealth. The form of Oath now proposed has been put to each of these countries and none has raised any objection, or has suggested that it is necessary to pass legislation in its own Parliament or in the Parliament of the United Kingdom. Indeed, it would not be possible in the time now remaining before the Coronation to arrange for legislation to be passed by the Commonwealth countries concerned.

(511 *Hans.*, cc. 2091-2.)

On 24th March, the Prime Minister made the following written reply to a Question:

I am circulating below copies of the first part of the Coronation Oath as taken by King George VI in 1937 and as to be taken by the Queen on 2nd June next. The remainder of the Oath is unchanged.

First part of Oath as taken in 1937.

" Will you solemnly promise and swear to govern the Peoples of Great Britain, Ireland, Canada, Australia, New Zealand, and the Union of South Africa, of your Possessions and the other Territories to any of them belonging or pertaining, and of your Empire of India, according to their respective laws and customs?"

First part of the Oath as to be taken by the Queen.

" Will you solemnly promise and swear to govern the Peoples of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, Pakistan, and Ceylon, and of your Possessions and the other Territories to any of them belonging or pertaining, according to their respective laws and customs?"

(513 *Hans.*, c. 64.)

United Kingdom (Regency Act).—On 19th November the Royal Assent was given to the Regency Act, 1953 (2 Eliz., 2, c. 1). The objects of the Act were threefold:

(i) to provide that the Duke of Edinburgh might become Regent in the event of (*a*) the succession to the Crown of a child under 18, or (*b*) a Regency becoming necessary during the reign of her present Majesty before any of her children or grandchildren had reached the age of 18;

(ii) to ensure that in the event of Her Majesty's incapacity, her heir should become Regent if over the age of 18; and

(iii) to provide that Queen Elizabeth the Queen Mother might be included, during her lifetime, among those designated by s. 6 of the

Regency Act, 1937 (1 Edw. 8 and 1 Geo. 6, c. 16), as Counsellors of State acting on behalf of Her Majesty in the event of her illness (not amounting to incapacity) or absence from the United Kingdom.

The Bill, which was introduced in the Commons as the result of a Message from Her Majesty requesting that the provisions contained in it might be made (520 *Com. Hans.*, 147-8), was passed without amendment by either House. During its Committee Stage in the Commons, Mr. Gordon-Walker (Smethwick) moved to insert an amendment with the object of providing that Her Majesty might have the option of appointing a single Governor-General instead of the Counsellors of State during her absence from the United Kingdom. After debate, the amendment was withdrawn (*ibid.*, cc. 1148-63). No amendments to the Bill were moved in the Lords.

House of Commons (Royal Prerogative of Mercy).—(i) On 27th January, Mr. S. Silverman (Nelson and Colne) sought the Speaker's advice concerning the following Motion which he had endeavoured to put down on the order paper, but which had not been allowed to appear:

> That this House respectfully dissents from the opinion of the Home Secretary that there were no sufficient reasons for advising the exercise of the Royal Clemency in the case of Derek Bentley; and urges him to reconsider the matter so as to give effect to the recommendation of the jury and to the expressed view of the Lord Chief Justice that Bentley's guilt was less than that of his co-defendant, Christopher Craig.

(Craig and Bentley had together been convicted of murder, but capital sentence had not been passed on Craig, who had fired the lethal shot, since he was below the statutory age.)

The Motion had been accepted by the Table Office at about 7 o'clock the previous evening, and Mr. Silverman had left the House at about 8.30. At about 10.15 he had been rung up at his home and told that, by Mr. Speaker's direction, the Motion would not appear on the paper.

As far as he knew, the only precedent for such a direct intervention by the Speaker was in a case where a Motion had clearly been put down for the personal annoyance of a single Member. It was, however, stated in *May* (15th edition, pp. 384-5) that:

> A notice wholly out of order, as, for instance, containing a reflection on a vote of the House, may be withheld from publication on the notice paper, or, if the irregularity be not extreme, the notice is printed and reserved for future consideration.

and

> When a notice publicly given is obviously irregular or unbecoming, the Speaker has interposed, and the notice has not been received in that form.

The advice tendered by a Minister to the Crown was not, he submitted, beyond challenge in the House, and any such challenge

should be made by a substantive Motion. It could not, therefore, be said that the notice was "wholly out of order", even though there might be restrictions upon the time at which the Motion might be moved. In any case, he considered that the Home Secretary's decision on the advice he tendered to Her Majesty became challengeable once the advice had been tendered; it was not necessary to wait until the sentence had been carried out.

Mr. Speaker replied:

> The Order Paper is a document published by the authority of the House, and the Speaker is charged, among other duties, with doing his best to see that nothing out of order or irregular appears upon it. Frequently the Speaker has had to intervene—I have myself—when Motions are offered. I have convinced an hon. Member that a Motion was out of order or taken some action myself.
>
> In this case, the Motion of the hon. Member, which I saw late last night, dealt with the case of a capital sentence which is still pending, and there is a long line of authorities of all my predecessors saying that, while a capital sentence is pending, the matter should not be discussed in the House.
>
> The hon. Member for Nelson and Colne did refer to the general doctrine that any action of a Minister, and any responsibility which he exercises departmentally, is one for which he is answerable to the House, but in this particular case of a sentence of a capital character which has not been executed, there is the strongest possible precedent for saying that the House should not discuss it, either by Questions, on the Motion for the Adjournment of the House or by any other means whatsoever. On that there is no doubt at all in my mind; it has been upheld by successive Speakers for a great number of years, and I have the precedents here, if the House would like me to refer to them.

Mr. Speaker then quoted the following ruling by Mr. Speaker Clifton Brown:

> The practice of the House makes a complete distinction between capital sentences and other forms of punishment, so far as the Prerogative of mercy is concerned. Whereas the remission of a sentence of imprisonment, for example, can be urged upon a Minister at any time after its imposition, a capital sentence cannot be raised in Question or debate while the sentence is pending. After it has been executed, the Minister responsible may be criticised on the relevant Vote in Supply, or on the Adjournment.
>
> (436 *Hans.*, c. 2181.)

Mr. Silverman then submitted that it was one thing to say that a debate on a particular day and at a particular time would have been irregular, but quite another thing to say that a Motion on the Order Paper was out of order.

Mr. Paget (Northampton) and Mr. Hale (Oldham, W.) pointed out that all the precedents for exclusion from the paper related to Questions, not notices of Motions, except in the case of the one scurrilous Motion to which reference had been made.

Mr. Speaker replied that the phrasing of the Motion, which urged the Home Secretary "to reconsider the matter", made it follow that the Motion, if debated at all, must be debated before the execu-

tion of the sentence. This would be wholly out of order, and the Motion itself was therefore also wholly out of order. This did not prejudice the right to table a Motion suitably expressed at a later time.

Mr. Silverman thereupon announced his intention to seek to move the adjournment of the House under S.O. No. 9. Mr. Speaker replied that for the reasons which he had already given, and the precedents he had already cited, he could not accept the Motion. (510 *Hans.*, cc. 845-59.)

On 2nd March, in answering a request by Mr. Donnelly (Pembroke) for clarification of the effect of the above-mentioned rulings on the rights of Members to put down notices, Mr. Speaker stated categorically that no new precedent had been established and no new limitation on the rights of Members had been enforced. (512 *Hans.*, cc. 40-1.)

(ii) On 14th July, Mr. Rogers (Kensington, N.) drew Mr. Speaker's attention to the fact that he had been refused leave to ask a private notice question asking for the discussion by the House of the Report on a certain judicial Inquiry before the impending execution of John Halliday Christie, a convicted murderer, who had been a witness before the Tribunal of Inquiry. He felt that the Report ought to be discussed before a material witness was executed, and was supported by Mr. Silverman, who contended that the House would be concerned, not with whether the execution should take place or not, but when it should take place.

Mr. Speaker said that his refusal to accept the question was based on Mr. Speaker Clifton Brown's ruling (quoted above). For the same reason, he subsequently refused to entertain a Motion for the adjournment under S.O. No. 9, calling attention to

> the necessity of the House to have an opportunity to discuss the Report of the tribunal appointed to inquire into the trial of Timothy John Evans before the execution of John Halliday Christie.

(512 *Hans.*, cc. 1897-1902.)

(iii) On 20th October, the following notice of Motion was set down for "an early day" in the name of Mr. Hector Hughes (Aberdeen, N.):

> That this House takes note of the Ruling of Mr. Speaker on 27th January 1953 that a capital sentence cannot be raised in Question or debate while the sentence is pending; that after the sentence has been executed the Minister responsible may be criticised; that this is the practice of the House which Mr. Speaker cannot alter; further takes note that on the 14th July 1953 Mr. Speaker construed this Ruling as extending to and preventing him from allowing debate upon the desirability of temporarily postponing the execution of a capital sentence for the purpose of preserving alive an essential witness in an inquiry or for any purpose whatsoever; that in the month of July 1953 and since, the Government and this House were, in the case of an inquiry into certain matters arising out of the deaths of Mrs. Beryl Evans and of Geraldine Evans and out of the conviction of Timothy John Evans of the murder of

Geraldine Evans deprived by the execution on the 15th July 1953 of John Halliday Christie of an essential witness into further inquiry into those matters; that this was done in accordance with the said practice, and is therefore of opinion that the said practice is contrary to public policy; is an infringement of the Sovereignty of Parliament; is a restraint on the administration of justice; and that, accordingly, the said practice should be so altered as to enable Mr. Speaker in appropriate cases to permit Questions and debate on a motion which will enable the House to decide whether execution of a death sentence should or can be postponed so as to preserve the life of a potential witness to give evidence at a Governmental inquiry.

(*Notices of Motions*, 1952-53, pp. 4093-4.)

No time was found for the discussion of this Motion.

Saskatchewan (Exception to Disqualifications).—The "exceptions to disqualifications" section of the Legislative Assembly Act (Rev. Stat. Sask., 1940, c. 3, s. 15 (and amendments)) has been amended by addition of a clause to clarify the position of Members of the Assembly who, being teachers by profession, contribute to or derive benefits from the Teachers' Superannuation Fund to which the Government is a contributor.

The amending Act (Stat. Sask., 1953, c. 2, s. 1), assented to on 20th March, 1953, provides that no Member shall be disqualified:

(*p*) by reason of his having made or hereafter making contributions or payments under The Teachers' Superannuation Act, 1953, or any former Teachers' Superannuation Act or by reason of his having received or hereafter receiving an allowance, refund or other benefit under any Teachers' Superannuation Act.

(*Contributed by the Clerk of the Legislative Assembly.*)

South Australia (Ministers of the Crown).—The Constitution Act was amended by the Constitution Act Amendment Act, 1953 (No. 28, of 1953), to provide—

(*a*) for increasing the number of Ministers from six to eight, five of whom must be Members of the Lower House;

(*b*) that no person shall hold office as a Minister of the Crown for more than three calendar months unless he is a Member of Parliament;

(*c*) that every Minister of the Crown shall, *ex-officio*, be a Member of the Executive Council.

(*Contributed by the Clerk of the Legislative Council.*)

Tasmania (Provision for equality of parties in the House of Assembly).—By the provisions of the Constitution Act, 1953 (No. 89), a new section 24A was added to the Constitution Act, 1934. This provided that if, as a result of a general election, each one of two opposing political parties was represented by 15 Members in the House of Assembly (the total membership of the Assembly being 30) an additional Member might be elected until the next general election. This was to be effected by declaring the election of whichever unsuccessful candidate of the majority party had obtained the

greatest number of votes. The majority party was defined as the party which had obtained the greatest aggregate number of votes.

In order to facilitate the operation of this Act, another Act was passed, entitled the Electoral Act, 1953 (No. 76). This provided that electors at a general election should record their vote for political parties as well as for individual candidates.

Ceylon (Corrupt practices at elections).—Section 58 of the Ceylon (Parliamentary Elections) Order in Council, 1946, provides, *inter alia*, that

> (1) every person who . . .
>
> (*c*) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher
>
> shall be guilty of a corrupt practice, and shall on conviction by District Court be liable . . . to a fine not exceeding Rs. 500 or to imprisonment of either description for a term not exceeding 6 months, or to both such fine and imprisonment.
>
> (2) Every person who is convicted of a corrupt practice shall, by conviction, become incapable for a period of 7 years from the date of his conviction of being registered as an elector or voting at any election under this Order or of being elected or appointed as a Senator or a Member of Parliament, and if at that date he has been elected or appointed as a Senator or a Member of Parliamnt his election or appointment shall be vacated from the date of such conviction.

In view of certain decisions of the Supreme Court of Ceylon, these provisions were considered to be rather severe. The Amendment therefore restricts those who can be charged under these provisions to candidates and election agents, but enables them to plead that the omission of the names and addresses arose from inadvertence or from some other reasonable cause of a light nature and did not arise from any want of good faith. Persons other than candidates and election agents against whom this charge might have been brought now become liable to be charged for an election offence under Section 52 of the Principal Act, with the proviso that they also may put forward the plea referred to earlier.

(*Contributed by the Clerk of the House of Representatives.*)

India, Central Legislature (Exemptions from Parliamentary Disqualification).—The Constitution disqualifies from membership of Parliament a person who holds any office of profit under the Government of India, or Government of any State, other than an office declared by Parliament by law not to disqualify its holder from such membership. The Prevention of Disqualification (Parliament and Part C States Legislatures) Act, 1953 (No. 30F), which applies to Parliament and the Legislative Assemblies of Part C States as well, declares, with retrospective effect, certain offices (namely, the offices of Chairman and member of advisory committees set up

to advise Government or other authority on matters of public importance, the offices of Vice-Chancellors of Universities, the offices of the Deputy Chief Whips in Parliament and the offices held by the Officers in the National Cadet Corps and the Territorial Army), not to disqualify from membership of Parliament or Legislative Assemblies of Part C States.

(*Contributed by the Secretary of the Lok Sabha.*)

Uttar Pradesh (Exemptions from Parliamentary Disqualification).—The U.P. State Legislature Members Prevention of Disqualification (Supplementary) Bill, 1953 (Act No. XX), provides that a person shall not be disqualified for being chosen as, or for being, a Member of the Uttar Pradesh State Legislature by reason of the fact that he is enrolled in the Territorial Army under the Territorial Army Act, 1948, or in the National Cadet Corps under the National Cadet Corps Act, 1948. Enrolment in the Territorial Army and the National Cadet Corps had amounted to holding an office of profit under the Government for the purpose of Article 191 of the Constitution, thus disqualifying the person concerned from membership of the State Legislature.

(*Contributed by the Secretary of the Legislative Assembly.*)

Pakistan (Dismissal of Cabinet by Governor-General).—On 18th April a communiqué was issued by the Governor-General, Mr. Ghulam Mohammed. Having outlined the difficult conditions which confronted Pakistan at the time, the Governor-General stated:

> I have been driven to the conclusion that the Cabinet of Khwaja Nazimuddin has proved entirely inadequate to grapple with the difficulties facing the country.
>
> In the emergency which has arisen I have felt it incumbent upon me to ask the Cabinet to relinquish office so that a new Cabinet better fitted to discharge its obligations towards Pakistan may be formed.
>
> I have, therefore, in exercise of my powers under Section 10 of the Government of India Act, as adapted, relieved Khwaja Nazimuddin's Cabinet of its responsibilities as my Council of Ministers.
>
> I have called upon Mr. Mohammed Ali, Pakistan's Ambassador to the United States of America, who is now present in Karachi, to form a Government.

A formal notification, dated 17th April, relieving the Prime Minister and his Cabinet of their offices, was promulgated as the Gazette of Pakistan Extraordinary (No. S. 1033).

Khwaja Nazimuddin, in a statement made at a Press conference in Karachi on 18th April, questioned the constitutional correctness of the action taken by the Governor-General in dismissing his Cabinet, but said: "The serious situation through which Pakistan is passing today demands that I should not do anything which will in the least weaken its position—within the country itself or in the international world." Answering a question, Khwaja Nazimuddin said that he was still the *de jure* Prime Minister of Pakistan, but not the *de facto* Prime Minister. In the course of a prepared statement, he said:

> It is my duty to tell the nation of the events leading up to the present crisis. His Excellency the Governor-General suggested to me that I and my colleagues should meet him at his residence. When we met him at his residence at 4 p.m. he demanded our resignations. I told the Governor-General that constitutionally and legally he has no right to make such a demand because he is purely a constitutional Governor-General. I also told him that I command confidence of the Legislative Assembly and country and, therefore, am entitled to remain in office. The fact that only recently the Legislative Assembly passed my budget by an overwhelming majority is a clear proof of the fact that I have the Legislative Assembly and the country behind me. For these reasons I refused to tender my and my colleagues' resignation.
>
> The Constitution of Pakistan lays down that the Governor-General has no discretionary powers nor can he exercise his individual judgment. All these provisions which gave the Governor-General such powers ceased to have effect with the enforcement of the Indian Independence Act of 1947 whereby the Dominion of Pakistan was set up. This is obvious, that according to law my Cabinet remains in office till such time that I myself tender resignation or the Legislative Assembly to which my Cabinet is responsible expresses no confidence in us. It is extremely painful that the Governor-General should have adopted an illegal and unconstitutional course and acted against the basic principles of democracy.

On 19th April, an article published in the newspaper, *Dawn*, contained the following comment on Khwaja Nazimuddin's statement by an official spokesman:

> The action taken by the Governor-General of Pakistan in dismissing Khwaja Nazimuddin's Cabinet is sanctioned by the provisions of Section 10 of the Government of India Act, 1935, as adapted in Pakistan by the Provisional Constitutional Order of 1947, and is in fact implicit in the entire constitutional set-up envisaged by that Act. The Governor-General is no doubt to be aided and advised by a Council of Ministers under Section 9; but under Section 10 these Ministers have to be chosen and summoned by him and they hold office during his pleasure. The continuance of a Ministry in office is thus dependent essentially upon the pleasure of the Governor-General. The moment the Governor-General decides to withhold his pleasure in the interest of public order and tranquillity of the realm or in any national emergency, the Ministry ceases to hold office.
>
> The Council of Ministers in our Constitution does not enjoy the same juristic position as does a Cabinet in the British Constitution. Confusion arises by undue emphasis on certain conventions as they are known to the British constitutional practice, and the confusion gets worse confounded when these conventions are read into the text of the existing constitution of Pakistan as though they were a part of it.
>
> The Cabinet as an entity is unknown to the English Constitutional law, although as a creature of convention it plays a very serviceable role in the mechanism of the English Constitution; but so far as the Council of Ministers as envisaged by Section 10 of the Constitution Act is concerned, the position is very different in that the Council has to be summoned and chosen by the Governor-General and is admittedly to hold office during his pleasure. The cessation of the pleasure of the Governor-General is a legal equivalent of the termination of their appointment as such Ministers.
>
> The contention that the Governor-General cannot dismiss his Ministry except under advice of that Ministry is not only repugnant to the text of the constitution; but is, in the nature of things, incapable of being defended even in a court of law. In fact under Section 10 (4) of the Act, what advice, if any, was tendered by the Ministers to the Governor-General is expressly declared to be one which cannot be enquired into by any court.

No provision exists anywhere in the present constitution of Pakistan on the basis of which it could ever be contended that the action of the Governor-General in dismissing his Council of Ministers is unconstitutional, irrespective of the advice of the Ministers concerned.

It may be mentioned in the context that the Khan Sahib Ministry in the N.W.F.P. and Mr. Khuhro, Chief Minister of Sind, were dismissed by the Governors of N.W.F.P. and Sind under Section 51 of the existing constitution. This action was admittedly not taken by the Governors on the advice of the Ministers concerned. Section 10 of the Constitution has identical import with Section 51 of the Constitution and confers on the Governor-General the same authority to dismiss his Council of Ministers as vests in the Governors under Section 51 of the Constitution with regard to the dismissal of Provincial Ministries.

The text of Section 10 of the Government of India Act, 1935, as adapted for Pakistan (to which reference was made in the Governor-General's Communiqué and the official spokesman's statement) is as follows:

(1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of ten consecutive months is not a member of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General;

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

Southern Rhodesia ("Office of Profit").—The expression "office of profit under the Crown" has been replaced by "paid office in the service or appointment of the Crown". At the same time the position in regard to Members receiving remuneration has been clarified, so that a Member is not deemed to have accepted a paid office in the service or appointment of the Crown if he receives merely a refund of out-of-pocket expenses and the payment of travelling and subsistence allowances, if the rate of payment does not exceed the rate laid down by resolution of the House. (Act No. 23, 1953, Section 11 (3).)

(*Contributed by the Clerk of the Legislative Assembly.*)

East Africa High Commission (Temporary Members and Oath of Allegiance).—The East Africa (High Commission) (Amendment) Order in Council, 1953 (S.I., 1953, No. 975), which came into operation on 23rd June, included constitutional changes affecting two aspects of the work of the Central Legislative Assembly:

(*a*) *Temporary Members:* Certain additions were made to the circumstances in which temporary Members might be appointed to the Assembly (s. 5 (*c*) and (*d*)) and in which such temporary appointments might be revoked (s. 5 (*h*)).

(b) *Oath of Allegiance:* The principal Order, which provided that every Member must take the Oath of Allegiance before sitting or voting (see JOURNAL, Vol. XVII, p. 281), was amended so as to allow a newly elected Member to be sworn by a judge in the Supreme or High Court of Kenya, Uganda or Tanganyika in order to take part in the work of a Committee of the Assembly sitting between the time of the Member's election and the next meeting of the Assembly. In any such case the judge would forthwith report to the Speaker that the Member concerned had taken and subscribed the oath; no further swearing would then be necessary when the Assembly met (s. 8).

Malta (Disqualification of Sitting Member).—(i) On 26th January the Court of Appeal gave judgment that the seat of Miss Mabel Strickland, O.B.E., M.L.A., be vacated on the grounds that since her election in May, 1951, the Progress Printing Company, Limited, of which she was the Chairman, Managing Director and Principal Shareholder, had secured a Government contract for the printing of the Legislative Assembly Hansards, and certain other documents.

The Court ruled that it was not necessary for Miss Strickland to have had personal cognisance or knowledge of these contracts to incur the vacation of her seat, and gave judgment in the following terms:

There is nothing in our law, which is the only law to be considered, that in any way justifies the view that cognisance or knowledge is required for the purposes of the forfeiture therein envisaged. The law demands only the positive fact of the subsistence of a contract at the relevant time. The words of the law are clear and definite and the Courts have no right to append additional requirements thereto. In point of fact, if the opinion of the Court needed any confirmation, this is to be found in section 9, which lays down that a person shall be liable to a penalty of two pounds for every day on which he shall sit or vote in the Assembly knowing, or having reasonable grounds for knowing, that he is disqualified for so sitting or voting, that his seat has become vacant—and it would not have been necessary here to mention knowledge as to the facts if such knowledge had been required also in connection with section 8 (*f*) above. It is clear therefore that knowledge is required only for the purposes of the penalty laid down.

It is also to be observed that the *ratio legis*, to which Defendant's Counsel has made reference, consists not only of the fact that the Member concerned may, by reason of his being beholden to the Government for the contracts in question, feel otherwise than at liberty to vote according to his inclinations, but also of the fact that the trust and confidence placed by the electors in their Representative should not be shaken by any suspicion to which such contracts may well give rise. The argument submitted by the Defendant, to the effect that knowledge is required in the English legal system, is likewise unacceptable, in that the words "*knowingly* and *willingly* furnish or provide" which occur in the law in England—the House of Commons (Disqualification) Acts, 1782 and 1801—do not recur in our law.

Even if this Court were to hold that knowledge is necessary, it is to be observed that, in English jurisprudence (*vide* Royse *v.* Birley—1869—L.R. 4 C.P. 296), the requirement as to knowledge is lacking where the Member who it is sought to unseat " does not know and has no means of knowing ". Now, the Defendant herself has established in her evidence that, at least so

far as the Magofo coupons are concerned, she had knowledge of the fact that the Company had undertaken the work ever since a Question on the subject was put to the Minister of Finance on the 5th November, 1952 (fol. 24). It is scarcely necessary to add that forfeiture is incurred even by reason of that one single contract.

Further, the Defendant " had the means of knowing " or " ought to have known " that the Company had obtained the other contracts for the printing of the Debates and the Farmers' Voucher Books: (*a*) As Chairman and Managing Director of the Company, it was her duty to keep herself informed of the work being undertaken by the Company; (*b*) so far at least as the printing of the Debates was concerned, notice that the respective contract had been placed was published in the Government Gazette, of which the Defendant regularly receives a copy, and which, as a Representative of the people, more than any other member of the community, one would expect her to read. It is also to be pointed out that, whilst the Defendant, on the occasion of the Elections held in 1950, took the precaution to instruct and warn Captain Agius not to accept any further printing work for the Government, exactly because of the risk of disqualification—she did not, on the occasion of the Elections held in 1951, either repeat those instructions and that warning, or sought to ascertain, as she was in duty bound to do, that no Government contracts were being undertaken on behalf of the Company by Captain Agius, who, as he himself stated in evidence, enjoyed full powers in that respect. It must be stressed that, at law, ignorance must be such as to be excusable, and ignorance on the part of those who voluntarily keep their eyes shut is not excusable.

(ii) On the same day the Court upheld the right of Miss Agata Barbara, M.L.A., to retain her seat, the occupation of which had been challenged on the ground that she had been elected while holding an office of emolument under the Crown in Malta (the office in question being an agency for promoting the sale abroad of tickets of Government Lotteries).

The Court ruled (*a*) that the appointment had not been validly made and (*b*) that even if this had not been so, it did not constitute an office of emolument under the Crown, which, in the opinion of the Court, meant " salaried employment with the Government ".

Nigeria (Dissolution of Regional Legislatures).—On 2nd May, by proclamation of the Governor (*Nigeria Gazette*, Vol. 40, No. 28), the Nigeria (Constitution) (Amendment) Order in Council, 1953 (S.I., 1953, No. 740), was brought into operation. It provided that the Lieutenant-Governor of a Region might at any time by proclamation prorogue or dissolve the Legislative Houses of the Region, upon a prayer to that effect by the Regional Executive. It also provided that Members of the House of Representatives who were Members of the Regional House so dissolved should continue to be Members until the Regional House had been reconstituted and had elected other persons to replace them in the House of Representatives; a similar provision ensured that a Minister whose seat was so affected should not vacate his seat in the Council until a successor had been appointed.

On 6th May the Eastern Regional Legislature was dissolved under the provisions of this Order in Council.

2. General Parliamentary Usage

House of Commons (Availability of papers laid upon the Table).—On 18th November, Mr. Hale (Oldham) raised the question of the publication of the Draft British Guiana (Constitution) (Temporary Provisions) Order in Council, 1953. This Instrument had been laid on 5th November (*Votes and Proceedings*, 1953-54, p. 13), and a copy had been placed in the Library of the House on that date; it was still, however, not available in the Vote Office. He pointed out that the period during which a prayer could be moved against the Order was limited by the Statutory Instruments Act, 1946, to 40 days.

Mr. Speaker, while affirming that the matter had nothing to do with him personally, informed Mr. Hale that a small number of copies would be delivered to the Vote Office within two or three days. Mr. Lyttelton, the Secretary of State for the Colonies, then informed Mr. Speaker and the House that 100 copies of the Order would be available at 5 o'clock that evening. (520 *Hans.*, cc. 1730-1.)

On 30th November, the Select Committee on Statutory Instruments made a Special Report (H.C. 7 (1953-54)), to which was annexed a Memorandum from the Colonial Office on a number of points relating to the Order in Council, and the Minutes of Evidence given by two officials of the legal department of the Colonial Office. It emerges from the Memorandum and Minutes of Evidence that in addition to the delay in the provision of copies of the Instrument for the Vote Office, there was also a delay in delivering copies to the Committee, which did not receive them until 18th November. It was explained that the delay arose solely from a misapprehension of the procedure of laying draft Orders in Council (which, it was alleged, the Colonial Office was only compelled to do in relation to British Guiana and Aden), and was therefore quite inadvertent.

The Committee reported as follows:

> Your Committee, at their meeting on Monday, 30th November, decided that the draft British Guiana (Constitution) (Temporary Provisions) Order in Council, 1953, did not call for the special attention of the House on any of the specific grounds set out in their Order of Reference. Your Committee felt, however, that in view of the facts which emerged during their consideration of the Instrument it would be for the convenience of the House to present the memorandum from the Secretary of State for the Colonies and the Minutes of the evidence given before Your Committee by Sir Kenneth Roberts-Wray and Mr. D. G. Gordon-Smith, of the legal department of the Colonial Office, in a Special Report.

In spite of the somewhat colourless character of this Report, the matter did not pass entirely without comment when the Order in Council was debated in the House on 7th December. Mr. Ede (South Shields), speaking on behalf of the Opposition, quoted the following question which had been asked of the witnesses by Dr. King (Test), a member of the Select Committee:

Is he aware that the copies reached the House only after an Hon. Member had asked the Minister in the House for copies; so that the delay is not simply a matter of delay between the 5th and 18th, but it is a fact that until an Hon. Member had raised the matter on the floor of the House copies were not available? (Minutes of Evidence, Q. 13.)

To this the principal witness had replied:

I am bound to say I had not heard this complaint before—about Hon. Members requesting copies—before I came here this afternoon. I had not seen this Minute from which I have been reading giving details of when copies were provided. The first batch was sent very soon after the request was made. I am not suggesting that the officers in the Colonial Office should not have known that further copies were required, but they got in touch with the printers at once and had further copies run off and sent them along as soon as they could after receiving the request for more copies.

The Chairman of the Committee had then asked:

Dr. King's question, I thought, was whether you were aware that that had been raised in the House? (Minutes of Evidence, Q. 14.)

The answer was:

I was not aware of that until now, Sir.

Mr. Ede's comment upon this exchange was:

So all these stories about civil servants living in dread of what this Hous does when matters relating to their Department come before the House are al moonshine. This legal officer, responsible for advising the right hon. Gentleman, had not heard that the right hon. Gentleman had been asked for these papers and that he had given an answer in this House.

In his speech in reply to Mr. Ede, Mr. Lyttelton said:

It would be seemly if I began by apologising for any inconvenience which may have been caused to hon. Members by the absence of copies of the Statutory Instrument from the Vote Office. I put the matter right as soon as it was brought to my attention. I am, of course, solely responsible, and I do not think that any of my officials should be censured for it.

(521, *Hans.*, cc. 1635-6.)

NOTE.—In the Lords, no occasion for debate arose on this matter. Several days before Mr. Hale raised the subject in the Commons, the Lords' Printed Paper Office (which corresponds to the Vote Office of the House of Commons and distributes papers to Peers) had asked for and obtained extra copies of the Paper in question from the Colonial Office. Members may think it worth noting that it was possible to adopt this simpler method of dealing with the matter in the Lords by reason of the fact that, in that House, the "original copy" of a paper laid upon the Table is kept available for reference in the Printed Paper Office, and not (as in the Commons) in the Library. In this way, the same officials are responsible both for the custody of the "original copies" of papers, and for the distribution of the printed copies.

House of Commons (Personal pecuniary interest of Member asking a Question).—On 4th February Mr. Kenneth Thompson (Walton) asked the Minister of Food a question concerning the de-rationing

of chocolates and sweets. Objection was taken by Mr. Pannell (Leeds, W.) on the ground that Mr. Thompson had not declared his personal interest in the confectionery industry. Mr. Speaker said that he had heard Members declare an interest during speeches and before votes, but had never struck the point about Questions, and would like to consider the matter, although it occurred to him at first sight that a Question was put down solely for the purpose of getting information. (510 *Hans.*, cc. 1843-4.)

On 5th February Mr. Speaker made the following Statement:

> I find that there is no rule of the House applying to Questions to Ministers of the kind suggested by the hon. Member for Leeds, West. Members frequently declare their interest—any interest they may have—when they speak in debate, but the rule of the House applies only to their votes. Even with regard to votes the rule is extremely narrow, and only one incident is recorded in the Journals of the votes of Members being disallowed by the House on this ground. On 17th July, 1811, Mr. Speaker Abbott said:
>
> > "The interest must be a direct pecuniary interest and separately belonging to the persons whose votes were questioned and not in common with the rest of His Majesty's subjects, or a matter of State policy."
>
> It is clear that the rationing of sugar confectionery is an interest held in common with the rest of Her Majesty's subjects and a matter of State policy. It follows from what I have said that there was no impropriety in the Question of the hon. Member for Walton.

Mr. Wyatt (Aston) then asked whether it was not necessary for a Member to declare his interest when making a speech, and how, if he did not make a speech, he could declare his interest before voting.

Mr. Speaker said:

> There is a custom whereby hon. Members, in making speeches, if they have an interest, declare it. I think myself that that has grown up as a matter of custom because hon. Members desire to be frank with their fellow Members, and it is sometimes a matter of prudence, in case an hon Member should be suspected of unavowed motives. But the rule of the House—I am dealing only with that—is with regard only to votes of hon. Members. If an hon. Member votes on a matter in which he has a private interest within the narrow limits I have stated, he may have his vote disallowed by the House. That is the answer to the question.

(*Ibid.*, cc. 2039-40.)

House of Commons (Statements outside House by Parliamentary Secretaries).—On 3rd March, Mr. Pannell (Leeds, W.), rising to a point of order, observed that a Question in his name, which had just been answered, had arisen from a completely erroneous statement made outside the House by the Parliamentary Secretary to the Ministry of Health. He said that he had tried to put down a Question to the Prime Minister whether such an erroneous statement represented the policy of the Government, but the Question had been disallowed by the Table. He therefore asked what course was open to hon. Members when a Parliamentary Secretary or Minister below Cabinet rank made a statement for which he could not be held responsible to the House.

Mr. Speaker replied:

The rule is perfectly clear. Questions can be addressed to Ministers only with regard to those matters for which they are administratively responsible to the House. That applies also as regards Parliamentary Secretaries, but Questions cannot as a rule be addressed to Parliamentary Secretaries unless they have been specifically nominated to take charge of certain departments of the Administration. The hon. Member asks my advice. I can only say that these matters can be raised in debate and by counter-speeches, and so on, but Questions cannot be used for that purpose.

After a further interchange, Mr. Speaker added:

Normally it is only Ministers of Cabinet rank whose statements can be made the basis of Questions which I have mentioned as being in Order.

(512 *Hans.*, cc. 173-4.)

South Australia Legislative Council (Gentleman Usher of the Black Rod).—On 22nd September the Legislative Council approved a Report of the same date from the Standing Orders Committee (Parliamentary Publication No. 12) recommending the creation of the office of Gentleman Usher of the Black Rod and the abolition of the office of Serjeant-at-Arms in the Council.

Ceylon (Status of Parliamentary Staffs).—Section 28 of the Ceylon (Constitution) Order in Council, 1946, provides, *inter alia*, that—

(3) the members of the Staff of the Clerk to the Senate shall be appointed by him in consultation with the President;

(4) the members of the Staff of the Clerk to the House of Representatives shall be appointed by him in consultation with the Speaker.

A further provision of the Order in Council excludes from the definition of "Public Officer" the Clerk to the Senate, the Clerk to the House of Representatives, or a member of the Staff of the Clerk to the Senate or the Clerk to the House of Representatives. Accordingly, the Parliamentary Staffs Act, No. 9 of 1953, was passed, which constitutes the Staff of each Chamber of Parliament a separate service, and vests the power to take disciplinary action against any member of the Staff of the Clerk to each Chamber in the Clerk to that Chamber, acting in consultation with the President or the Speaker as the case may be. Although the power to take disciplinary action is not expressly conferred on the Clerks by the Order in Council, this power has been understood to be implied in the right to appoint conferred on them.

The general direction and control of the Staff of the Clerk to each Chamber is vested in an Advisory Committee, who are empowered to make financial regulations, applicable to the members of the Staff of the Clerk to that Chamber, containing provision for the conditions of service, etc., of such members.

In the case of the Senate the Advisory Committee consists of the President, the Leader of the Senate and one other Senator nominated by the Minister of Finance; and in the case of the House of Representatives, the Speaker, the Leader of the House and the Minister of Finance.

The Advisory Committee are also responsible for the preparation of the Annual Estimates of the respective Chambers.

(*Contributed by the Clerk of the House of Representatives.*)

Malta (Language).—Section 32 of the Malta (Constitution) Letters Patent, 1947, provided that all debates and discussions in the Assembly be conducted in the English or Maltese language, and no other, and that every speech delivered in the Assembly be printed in the Journals and proceedings of the Assembly in both languages; the same section also laid down that all Journals, entries, minutes and proceedings of the Assembly be made and recorded in both languages.

These provisions were repealed by the Malta (Constitution) (Amendment) Letters Patent, 1953 [No. 544], dated 17th April, which provided that speeches should be printed only in the language in which they were delivered, and that entries recording the proceedings of the Assembly in the Journals and minutes might in the first instance be made in one language only.

3. Privilege

Ceylon (Powers and Privileges Act).—Section 27 of the Ceylon Constitution) Order in Council, 1946, provides that the privileges, powers and immunities of the two Houses of Parliament may be determined by an Act of Parliament provided that such privileges, powers and immunities shall not exceed those enjoyed for the time being by the House of Commons. It further provides that until such an Act is passed the privileges of the two Houses and of their Members shall be the same as those enjoyed by the State Council. The privileges, powers and immunities of the State Council are defined in the State Council Powers and Privileges Ordinance No. 27 of 1942, as amended by Ordinance No. 28 of 1942, which conferred the privilege of freedom of speech and gave necessary powers with respect to the examination of witnesses. The Ordinance also declared that a large number of Acts which in the United Kingdom would constitute contempts of the House of Commons would be punishable as offences. The two Houses felt that this Ordinance was unsatisfactory in many respects. A Joint Select Committee of the Senate and the House of Representatives was therefore appointed to consider whether the privileges, powers and immunities of the Senate and the House of Representatives and of the Senators and Members of Parliament should be determined and regulated by an Act of Parliament and make recommendations in connection therewith. The Parliament (Powers and Privileges) Act, No. 21 of 1953, embodies the recommendations of the Joint Select Committee.

The Act is in two parts, of which Part I deals generally with the question of privileges, immunities and powers to be bestowed on the two Houses, and Part II deals with offences against the two Houses.

The general privileges, immunities and powers granted to the two Houses consist of—

(*a*) freedom of speech, involving freedom from being sued for what one utters in the House or in a Committee of the House or for publishing the same;
(*b*) freedom from civil arrest (which is now rare in Ceylon);
(*c*) freedom from liability in damages or otherwise for acts done under the authority of the House;
(*d*) power to summon witnesses;
(*e*) power to regulate the admittance of strangers into the House, with the connected power of dealing with strangers who create disturbances.

In addition to the above, Clause 7 confers all other immunities enjoyed by the House of Commons but carefully refrains from similarly conferring on the two Houses the privileges and powers of the House of Commons. The purpose of confining this Clause to immunities alone was because of the determination of the Committee as far as possible not to recommend that the two Houses should enjoy the punitive powers enjoyed by the House of Commons.

The question of offences against the two Houses has been dealt with in Part II of the Act. The Joint Select Committee having decided that contempts should, in the main, be punishable by Court, have found it necessary to lay down what actions constitute contempts. Schedules A and B to the Act contain all the well known categories of contempts which are regarded as such in the House of Commons.

The Act provides for the offences in both Schedules to be punishable by the Supreme Court, while those in Schedule B can also be dealt with by the House concerned if the House considers that the facts constituting the offences are such that a small punishment such as admonition would meet the case. Thus the offences in Schedule B are mainly those committed *ex facie* the House. It was thought by the Committee that in this type of offence some power should be reserved to the House to mete out punishment at once, but the power to punish was to be within very strict limits, *viz.*, admonition, or in the case of an offending Member, suspension from the House up to one month.

The procedure contained in Part II of the Act for dealing with offences has been very carefully worked out. The existing State Council Powers and Privileges Act, which also creates offences, has been found to be entirely unworkable owing to the fact that it contains no provision as to how the House can take a matter to Court. The Attorney-General cannot be ordered by the House to prosecute an offender, and indeed the Ordinance requires him to act in a semi-judicial capacity and to grant sanction before the House can prosecute an offender. This difficulty has been met in the Act by appointing the Attorney-General virtually the legal representative of each House, to whom the President or the Speaker entrusts a case after holding a preliminary inquiry either on his own or through a Mem-

ber or the Clerk. The Attorney-General advises the President or Speaker on the material placed before him whether there is a sufficient case to warrant instituting proceedings in Court. This advice is reported to the House, and it is for the House, by resolution, then to order the Attorney-General to take the matter to the Supreme Court. By this procedure, therefore, the House obtains both the legal advice and the representation in Court of the Attorney-General.

(*Contributed by the Clerk of the House of Representatives.*)

Mauritius and Nigeria (Privileges Ordinances).—In continuance of the article on page 133 of Volume XXI of the JOURNAL, we give details of two further Privileges Ordinances—the Legislative Houses (Powers and Privileges) Ordinance, 1953, of Nigeria (No. 16), and the Legislative Council (Privileges, Immunities and Powers) Ordinance, 1953, of Mauritius (No. 22). On the points noticed in the previous article, the provisions of these two Ordinances are as follows:

(1) *Arrest.*—Both Ordinances agree in reversing the normal approach to the Members' privilege of immunity from arrest, by providing that it shall be a contempt of the House for anyone to obstruct or molest any Member in or near the Chamber, or on his way to or from it, or as a result of his conduct in the House. The Nigeria Ordinance, indeed, specifically describes the person committing such an offence as a "stranger", which, although the expression is defined as "any person who is not a Member or Officer of the House", does not give the impression that a Member has a special immunity against unlawful arrest or detention, whether on the part of the Government or anyone else (s. 16 Nigeria, s. 6 (*e*) Mauritius).

(2) *Freedom of speech* is guaranteed by a section giving immunity from civil or criminal proceedings to any Member in respect of his Parliamentary actions (s. 3 of both Ordinances).

(3) *Press reports.*—s. 27 of the Nigerian Ordinance and s.17 (2) of the Mauritius Ordinance give protection to any person who publishes an extract from or summary of any official document of the House, if such publication was *bona fide* and without malice. But there is no protection to a newspaper which makes a fair comment upon proceedings in the House, even though both Ordinances envisage (in ss. 15 (*c*) and 8 (*d*) respectively) the granting of official permission to journalists to attend their debates.

Disturbances, strangers, evidence, etc.—The two Ordinances provide for punishment by the Courts of strangers or Members who interrupt or disturb the sittings of the House; for the removal and regulation of strangers; and for privilege to be attached to evidence given before committees, as well as for the powers of such committee to call for evidence. There are also provisions against the giving or receiving of bribes.

4. Order

United Kingdom: Inter-cameral relations.—On 28th July two questions bearing on the relation between the Houses were raised in the Lords, namely, whether a Speaker's ruling could be discussed by the Lords, and whether a Member—whether a Minister or not—who was particularly and personally attacked in one House could answer in the other. The conduct of the Marquess of Salisbury, who was Acting Foreign Secretary, had been attacked in the Commons, and Ministers had told that House that he would deal in the Lords with the matters raised in the Commons. Lord Stansgate accordingly drew the attention of the Lords to the following Speaker's ruling:

> . . . where the conduct of a Minister is particularly attacked, and that Minister happens to be in another place, there seems to me to be no impropriety whatsoever in him giving an explanation in his own House.

Lord Stansgate asked whether that ruling did not break "the old and decent rule that Members of one House should not reply to speeches made in the other".

The next day Lord Stansgate was answered by Lord Woolton, Lord Salisbury and Lord Simon, the gist of whose comments was—

(1) that it is not proper in this House to comment on a ruling on a point of order made by Mr. Speaker in another place. (Lord Woolton.)

(2) no answer should be given in this House to statements made by private Members in another place though, of course, reference may be made to points raised in debate which might equally well have been raised anywhere else. But when it comes to a violent personal attack, then I should have thought the man attacked would have the right to reply to it. . . . Suppose that somebody in another place were to say of a noble Lord here: "This Noble Lord is a traitor." It is a privileged place in which he makes that statement. . . . It would be absurd for the noble Lord in this House not to be able to make any reply to that at all. (Lord Salisbury.)

(3) surely the rule . . . is, primarily, a rule that we should not conduct controversy by long-distance exchanges between a private Member of this House and a private Member of the other House. What has that to do with the conduct of Ministers? What happened here, I gather, was that in the debate in another place there was an attack made upon the noble Marquess . . . [which] was replied to by his colleagues in the Commons, who went on to say that there was to be a debate in the Lords, and they had no doubt that the noble Marquess would then deal with the matter. What is wrong with that? (V. Simon.)

(183 *Hans.*, 948, 1011.)

India, Lok Sabha (Member ordered to withdraw from House).—1. On 6th March, three Members of Parliament, Dr. S. P. Mookerjee, Shri N. C. Chatterjee and Shri Nand Lal Sharma, along with some other persons, were arrested and detained by the District Magistrate of Delhi for leading a procession in defiance of a ban on processions promulgated in the State of Delhi. The procession was organised in support of "Jammu Agitation" which was being carried on for some time past in the State of Jammu and Kashmir, by a section of the people of that State, demanding full integration and merger of the State with India and the application of the Indian Constitution to that State.

2. On 9th March, when the House of the People reassembled after the week-end, the three Members named above were still under detention. Some Members of the Opposition gave notice of three adjournment Motions. The Home Minister (Dr. K. N. Katju) objected to leave being granted to move the Motion and pointed out that their cases were not only *sub judice* in a local court, but a petition had been moved in the Supreme Court for a writ of *habeas corpus*. He further stated that for these reasons, and also because the maintenance of law and order was a State subject (of the Delhi State), the matter could not be raised on an adjournment Motion. Concurring with this view the Deputy Speaker, who was in the Chair, disallowed all the three adjournment Motions.

3. On the same day there was a fourth adjournment Motion given notice of by Shri V. G. Deshpande, by which he sought to censure the Government for an alleged *lathi* charge by the police at a meeting in Delhi which was held on 8th May, 1953, in support of the "Jammu Agitation". When Shri Deshpande was speaking on the merits of his Motion being admitted for a discussion, there were frequent interruptions by certain Members, with the result that the Deputy Speaker had to call the House to order. Apparently failing to make himself heard, due to the interruptions, Shri Deshpande raised his voice and continued his speech in a loud tone which appeared rather indecorous. He was therefore asked by the Deputy Speaker to stop his speech, which he refused to do, whereupon the Marshal's services were requisitioned. However, before the Marshal reached Shri Deshpande's seat, the Member asked the Chair to excuse him and sat down. None the less the Deputy Speaker took strong exception to his conduct and asked the Member to withdraw from the House for the rest of the day, which he did.

4. Thereupon a point of order was raised as to whether it was right on the part of the Chair to call the Marshal to his aid when a Member who was speaking did not obey the Chair on being asked to stop. The Deputy Speaker observed that when a Member did not obey the direction of the Chair it was the duty of the Chair to seek the aid of the Marshal to enforce his decision. As a protest against this ruling, the Communist Members and some other Mem-

bers of the Opposition walked out of the House. (H.P. Deb., 1, 9.3.53.)

(*Contributed by the Secretary of the Lok Sabha.*)

5. Procedure

Canada: House of Commons (Debate on Motion for Mr. Speaker to leave Chair).—On 26th March Mr. Speaker ruled (V. & P. 1953, pp. 419-21) that no debate could be entertained upon a Motion for the Speaker to leave the Chair in order to allow the House to resolve itself into committee upon a money resolution. This amended a ruling previously given by him on 18th June, 1953 (*Hans.*, 1953, pp. 3293-4), to the effect that such a Motion was debatable provided that the substance of the money resolution itself was not discussed. It had, he said, been found impossible to put this earlier ruling into effect.

Motions of this nature are governed by S.O. No. 60, which reads as follows:

> If any Motion be made in the House for any public aid or charge upon the people, the consideration and debate thereof may not be presently entered upon, but shall be adjourned till such further day as the House thinks fit to appoint; and then it shall be referred to a committee of the whole House before any resolution or vote of the House do pass thereupon.

Mr. Speaker ruled that the provisions of S.O. No. 38, which state that Government Notices of Motion for the House to go into Committee at a later date are not debatable, precluded any debate whatever on the *first* day. In addition, he felt that it was not permissible on the *second* day either because once the House had decided upon a particular day in which to resolve itself into Committee of the whole House, the only subject that remained to be decided on the appointed day itself was the precise time at which the Speaker should leave the Chair. This, however, was governed by S.O. No. 17 (2), which provided that:

> Whenever Government business has precedence, Government orders may be called in such sequence as the Government may think fit.

From this it was clear that the Motion for the Speaker to leave the Chair was purely a procedural Motion; such Motions, as ruled in 1923 by Mr. Speaker Lemieux (*Hans.*, 1923, p. 4013), were not debatable.

New Zealand (Urgency procedure).—On 23rd April, S.O. No. 45 (Urgency), which lays down the procedure whereby the proceedings on a Bill or matter declared urgent by a Minister may be exempted from all restrictions imposed by Standing Orders and completed forthwith, was amended by the addition of the following paragraph:

> Where urgency has been accorded any such Bill, matter, or other proceeding, such urgency shall be deemed to have lapsed if when such proceedings

have been entered upon they are interrupted for any purpose other than the following:

(1) By matter of privilege suddenly arising:
(2) By words of heat between Members:
(3) By Question of order:
(4) By an answer to an Address:
(5) By a Member appearing to be sworn:
(6) By a Motion that strangers be ordered to withdraw:
(7) By notice being taken and the House being counted:
(8) By the making, by leave, of a Ministerial statement.

During the course of the debate the following statement was made by Mr. Speaker (who acknowledged that he was responsible for the drafting of the amendment):

The question has never actually arisen as to what can destroy urgency once it has been accorded, and there is a definite doubt within the present wording of Standing Order No. 45 as to whether the rights of the Opposition might not be seriously impaired by the introduction of a Bill, by Governor-General's message, during a period of urgency, without urgency being lost. It is essential for the protection of the House and for the guidance of the Speaker that the conditions under which urgency should not be lost should be clearly set out rather than that they should be implied. There is no Speakers' ruling to say under what conditions urgency, once granted, shall be lost, and it must be quite obvious to members that, urgency being granted and the matter not going satisfactorily to the Government of the day, the Government could introduce Bills by Governor-General's message. A discussion would ensue, and that discussion might go on for hours. . . . As the Standing Order stands at present, there is no clear statement that, if that was done, urgency would be immediately lost, so it was thought better that the conditions under which urgency should not be lost should be clearly set out in the Standing Order so that everybody would know just what the position was. Therefore, the conditions under which urgency shall not be lost are set out in the amendment that has been moved by the Prime Minister. The matters set out in the amendment cannot take any length of time; they are matters which must be dealt with as they arise; and they are matters which cannot affect the rights of minorities or the right of the majority to see that the business of the House is put through. (299 *Hans.*, 228-9.)

Cape of Good Hope Provincial Council (Notices in anticipation of session).—On 11th June a new Rule was substituted for the existing Rules 194 and 195, which had provided that any notice of Motion or draft ordinance delivered to the Clerk while the Council was not in session should, if certified by the Chairman to be in order, be published in the *Official Gazette*. By the terms of the new Rule, any Motion which is intended to be moved on the day of resumption of the session must be submitted to the Clerk 21 days previously; it will then be set down on an Order Paper, copies of which are to be posted by the Clerk to every Member at least 14 days before the resumption.

6. Standing Orders

India: Lok Sabha (Amendments to Rules of Procedure).—Extensive amendments to the Rules of Procedure of the House of the People were promulgated by direction of Mr. Speaker on 30th May

(*Gazette of India*, Part 1, Sec. 1, No. 71) and 3rd October (*ibid.*, No. 122 C). These amendments were incorporated in a new edition (the Third) of the Rules published in January, 1954, in which the Rules were rearranged and renumbered. To avoid confusion, all references in the succeeding paragraphs, in which the more important amendments are described, will be to the new numbers as set out in the Third Edition, whether the rules in question are new rules or amendments to rules already existing.

Oath or Affirmation.—A new Rule (No. 5) provides that Members may, after notice, swear or make affirmation at the commencement of any day's sitting.

Sittings of the House.—A new Rule (No. 15) gives the Speaker power to call a sitting of the House before the date to which it has been adjourned, or during an adjournment *sine die*.

Arrangement of Business.—An amendment to Rule No. 26 defines the days which may be allotted to different classes of business (discretion having previously been left completely in the hands of the Speaker).

Committee on Private Members' Bills and Resolutions.—New Rules (No. 40-50) provide for the setting up, procedure and powers of a Committee to examine all private Members' Bills (i) if to amend the Constitution, before a Motion for leave to introduce them is set down on the Order Paper, and (ii) otherwise, after their introduction.

Questions to Ministers.—An amendment to Rule No. 60 excludes questions relating to Cabinet discussions, certain categories of advic given to the President, or matters under consideration by a Pa liamentary Committee. Rule No. 65 also provides that a Ministe may, with the Speaker's permission, voluntarily answer a questio which has not been reached at the end of question time. A new Rule (No. 71) forbids references in the answer to a question to proceedings in the Council during the current session.

Introduction of Bills.—Rule No. 84 (4) provides that the Speaker may disallow notices of Bills which have failed to comply with certain constitutional and financial provisions.

Motions after introduction of Bills.—Rule No. 92 (2) provides for the moving of instructions to a Select or Joint Committee to which a Bill is to be committed.

Select Committees on Bills.—Rule No. 111 (6) and (7) provides that minutes of dissent must be couched in decorous and temperate language, and that any contraventions of this may be expunged from the minute by Mr. Speaker's direction.

Withdrawal of Bills.—Rule No. 146 restricts the grounds upon which a Bill may be withdrawn to two, namely (*a*) that the proposal contained in the Bill is to be dropped, or (*b*) that the Bill is to be substantially replaced by a new Bill. A new Rule 149 provides for the automatic withdrawal of a Private Member's Bill if the Member either ceases to be a Member of the House or becomes a Minister.

Bills seeking to amend the Constitution.—New Rules (No. 166-170) lay down that every clause or schedule of such a Bill must be agreed to by not less than two-thirds of the Members present and voting (amendments, however, only require a simple majority vote). Certain procedural Motions, and the Motion that the Bill be passed, require *in addition* the assent of a majority of the total membership of the House. Voting on all Motions affected by these Rules must be by division.

Discussion on matters of urgent public importance for short duration.—New Rules (No. 211-4) provide that if a Member, supported by two others, gives notice of a desire to discuss a matter of urgent public importance, and Mr. Speaker agrees that the matter is in fact urgent and important, the notice is admitted and a date for its discussion decided upon by the Speaker and the Leader of the House. The debate is restricted to two and a half hours, without formal Motion or voting.

Demands for Grants.—By an amendment to Rule No. 231, the policy underlying the original grants may not be raised in a debate on supplementary grants.

Appropriation Bill.—New paragraphs (4)-(6) of Rule No. 233 restrict debate on an Appropriation Bill to matters which have not already been raised in supply debates: intending speakers must give notice of the matters they wish to raise to Mr. Speaker, who may disallow them if they have already been so discussed. Debate on an Appropriation Bill in pursuance of a supplementary grant may not cover the original grant, except where necessary in elucidation.

Committee on Public Accounts.—By Rule No. 237 (4) the Committee is compelled to examine and report on any excess vote. By amendments to Rule No. 238, the Committee's quorum is increased from 4 to 5, and Ministers are prohibited from serving on it.

Committee on Estimates.—By amendments to Rule No. 239, the Committee's terms of reference are enlarged by the power to suggest alternative policies in order to bring about efficiency and economy in administration, and to examine whether, within the limits of implied policy, money is well laid out. Ministers are prohibited from serving on the Committee, and its quorum is increased from 6 to 8.

Privilege.—By an amendment to Rule No. 244 the House is empowered to deal direct with a question of Privilege, as an alternative to referring it to the Committee of Privileges. Consideration of the Reports of the Committee of Privileges is itself accorded the priority of a question of Privilege (Rule No. 253).

Arrest, detention, etc., and release of a Member.—New Rules (No. 257-8) lay down that immediate intimation shall be made to the Speaker of the arrest, sentence, detention or release on bail of a Member. This information must be forthwith communicated to the House by Mr. Speaker.

Committee on Government Assurances.—New Rules (No. 273-8) provide for the setting up and procedure of a Committee on Government Assurances "to scrutinise the assurances, promises and undertakings, etc., given by Ministers . . . on the floor of the House, and to report on (*a*) the extent to which such assurances have been implemented; and (*b*) where implemented, whether such implementation has taken place within the minimum time necessary for the purpose".

Dilatory Motions.—New paragraphs (2) and (3) of Rule No. 310 provide that Mr. Speaker's power of putting the question forthwith or declining to propose the question, on Motions for adjournment of the debate if considered to be an abuse of the rules of the House, shall extend also to Motions for recirculation or recommittal of a Bill.

Anticipatory discussion.—A new Rule (No. 312) makes provisions similar to those of S.O. No. 11 of the House of Commons (as to the reasonable probability of a debate taking place).

Parliamentary Committees.—Rule No. 343 (2) provides that no Member unwilling to serve may be appointed to a Parliamentary Committee. Rule No. 357 is amended to provide for decision b the Speaker in cases of dispute whether the evidence of a person o the production of a document required by a Committee is in fa relevant to the Committee's purposes; the Government may also decline, on security grounds, to produce a document. Power is given to Committees by a new Rule (No. 358) to make Special Reports outwith their terms of reference. When presenting a report, the Chairman of a Committee is empowered by an amendment to Rule No. 365 to make a brief statement, which may not be debated. Committees may pass resolutions on matters relating to their own procedure, which are subject to Mr. Speaker's approval (new Rule No. 367).

Personal, pecuniary or direct interest.—A new Rule (No. 370) provides machinery whereby a Member, to whose inclusion in a Committee objection is taken on the grounds of personal or pecuniary interest, may justify himself before Mr. Speaker, whose decision, if adverse, automatically excludes him from membership of the Committee. Mr. Speaker may also disallow the vote of a Member in the House for similar reasons. Personal and pecuniary interest must "separately belong to the person whose vote is questioned and not [be] in common with the public in general or with any class or section thereof or on a matter of State policy".

Chamber of the House.—The Chamber is not to be used for any purpose other than the sittings of the House (new Rule No. 384).

Nigeria, Western Region (Joint Council Standing Orders).—On 29th June, Standing Orders made under the Nigeria (Constitution) Order in Council, 1951, were promulgated for the Joint Council of the Western Region (*vide* JOURNAL, Vol. XX, pp. 208-9). It will be recalled that one of the main functions of the Joint Council is to

decide whether the appointment of ministers be approved; this is provided for in detail in S.O. No. 5, which lays down that approval or disapproval must be signified by secret ballot, with the provision that

> a Member who so desires may, on being called, come to the Chair and indicate his vote in a low tone to the President, who shall forthwith mark a ballot paper accordingly and hand it to the Member, who shall put it in the box provided.

Rules of debate, the procedure of raising a point of order, the behaviour of Members not speaking, the rule of relevancy, closure and the preservation of order are succinctly prescribed according to the procedure of the House of Commons; voting, however, is to be conducted "in such manner as the President may direct". An Official Report of speeches, "as nearly as possible verbatim", is to be prepared under the supervision of the Clerk. Strangers and representatives of the Press are to be admitted under the general supervision of the President.

7. Financial Procedure

India (Speaker's certificate of a Money Bill).—The Indian Income Tax (Amendment) Bill was passed by the House of the People on 25th April and transmitted to the Council of States for its recommendations as it was certified as a Money Bill by the Speaker. Under the Constitution of India the certificate of the Speaker of the House of the People with regard to a Bill being a Money Bill is final. Further, such Bills can be introduced in the House of the People only, and the Council of States can make recommendations in the case of Money Bills to the House of the People within a period of 14 days from the date of its receipt by them. It is open to the House of the People to accept or not to accept such recommendations made by the Council of States.

When the Bill came up before the Council of States some Members contended that although the Speaker had certified the Bill to be a Money Bill, it was not so in their opinion and that it was within the competence of the Council to refer the Bill back to the Speaker for a review of his decision as to whether it was a Money Bill or not.

The Minister of Law (Shri C. C. Biswas), who is also the Leader of the Council of States, concurring in that view, observed that "according to the information available to us the Bill has been treated, maybe by the Secretariat of the House of the People, as a Money Bill and placed before the Speaker as such" for his certificate. He therefore suggested that it might be ascertained from the Secretary to the House of the People as to whether the certificate that it was a Money Bill was given by the Speaker "on points of fact or whether it was given on any question raised" thereon.

On 30th April the Chairman informed the Council of States that the Secretary to the House of the People had stated in reply to

enquiries that "the question of whether the Indian Income Tax (Amendment) Bill as passed by the House of the People was a Money Bill within the meaning of Article 110 of the Constitution of India was raised by the Speaker himself, and he took a decision which was later embodied in the certificate entered in the Bill". The Chairman, therefore, ruled that the certificate was conclusive and that the consideration of the Bill should be proceeded with on the basis that it was a Money Bill.

On the same day in the House of the People some Members considered that the Law Minister's observations in the Council raised a question of privilege, as they reflected on the integrity of the Speaker, and a Member (Pandit Thakur Das Bhargava—Punjab) desired to move a Motion to the effect that the remarks made by the Law Minister in the Council of States on 29th April were "unjustifiable and inconsistent with the dignity of the Speaker". The Deputy Speaker, who was in the Chair, suggested that the matter might be brought up before the House for discussion on the following day, and suggested that the Law Minister might be requested to be present in the House at the time of the discussion. It may be stated that under the Constitution a Minister has a right to take part in the proceedings of and to speak (but cannot vote) in the House of which he may not be a Member.

On 1st May a question of privilege was raised in the Council of States on the ground that the House of the People could not ask the Law Minister, who was a Member of the Council of States, to be present in that House when a Motion relating to his remarks in the Council was to be discussed. The Council, therefore, adopted the following resolution:

> That this Council is of the opinion that the Leader of the Council be directed not to present himself in any capacity whatsoever in the House of the People when the matter sought to be raised by Pandit Thakur Das Bhargava with reference to the speech of the Leader of the Council regarding the certificate of the Speaker endorsed on the Indian Income Tax (Amendment) Bill, 1953, is under discussion in that House.

Later, on the same day, when the matter was raised in the House of the People, a formal message was received from the Secretary to the Council of States forwarding a copy of the statements made by the Chairman and the Leader of the Council, which were both read out to the House. In his statement the Chairman had assured the House of the people that:

> it was nobody's intention, least of all of the Leader of the Council, to cast aspersions on the integrity and impartiality of the Speaker. It is our anxiety in this Council to do our best to uphold the dignity of the Speaker and the privileges of the other House as we expect the other House to protect our interest and privileges.

In his statement in the Council the Law Minister had also explained that he never cast any aspersion upon the Speaker nor was it ever his intention to do so.

To close this controversy finally, the Prime Minister, on 6th May, made a statement on the floor of the House of the People that the Speaker's authority was final in declaring that a Bill was a Money Bill and his certificate could not be challenged. He pointed out that though there was no obligation on the part of the Speaker to consult anyone in coming to a decision or in giving his certificate, in every case since the commencement of the Constitution in 1950 the Speaker had consulted the Ministry of Law before he recorded his decision and that in this particular case the Speaker had sought the advice of the Law Ministry twice—once at the time the Bill was introduced in the House and the second time when the Bill had been reported by the Select Committee and passed by the House. He regretted the fact that the Law Minister was unaware of the facts of the case when he referred to the matter originally in the Council. The Law Minister for his part assured the House that it had never been his intention to cast any reflection on the Speaker or upon the dignity of the House, and tendered his "profoundest apology" for any unwitting offence which he might have given. (C.S. Deb., 29.4.53, 30.4.53 and 1.5.53; H.P. Deb., 30.4.53, 1.5.53 and 6.5.53.)

(*Contributed by the Secretary of the Lok Sabha.*)

8. Bills, Petitions, Etc.

United Kingdom (Effect of Allocation of Time Order in Commons on Lords Amendments involving financial privilege).—On 27th April, Mr. Crookshank (Gainsborough), the Leader of the House, rose to move a Motion providing for the completion, at that day's sitting, of the consideration of the Lords Amendments to the Transport Bill. The crucial sentence of the Motion read:

> If, on the expiration of four hours from the time when the Order of the day for the consideration of those amendments is read, those proceedings have not been completed, Mr. Speaker shall forthwith put, as a single question, the question that the Lords Amendments, so far as not already agreed to or disagreed to . . . be agreed to.

Mr. H. Morrison (Lewisham, S.), rising to a point of order, drew Mr. Speaker's attention to the fact that a number of the Lords Amendments concerned involved questions of financial privilege necessitating a special entry to be made in the Journals if they were agreed to.

Mr. Speaker observed that he had noted that there were 7 such amendments, as to which, if the House agreed to them, he would direct a special entry to be made.

Mr. Morrison then said that when the Chair drew the attention of the House to the fact that an amendment involved privilege, it was for the purpose of enabling the House, if it so desired, to object in the interests of the privilege of the House. If Mr. Crookshank's Motion were agreed to, the outstanding amendments would be put as a whole, and the House would be forbidden to particularise and could not object to any individual amendment on grounds of

privilege. He therefore contended that the Motion was out of order.

After hearing a further submission by Mr. Hale (Oldham, W.), Mr. Speaker read out a list of the amendments which, in his opinion, involved privilege, and ruled:

In the usual way I should call the attention of the House to them as they came along. It would be for the House then to decide whether or not it waived its Privileges. The House cannot do anything against its own Privileges. If the House sanctions it, by passing the Amendments—and I see no difference between passing them *seriatim* and *en bloc*—it waives its Privilege on those occasions. It is my duty to draw the attention of the House to that, and that is why I do so now.

Once the House has agreed to the Motion, it has automatically waived its Privilege. All that can be done, all that is done, is for Mr. Speaker to direct that a special entry be made in the Journals, which I shall do in this case, drawing attention to the fact. But I see nothing in that point which makes the Motion out of order.

Mr. Morrison then said that the Motion would completely wipe away the chance of the House to raise the question of privilege. Mr. Speaker would have to tell the House that a matter of privilege had been raised and specifically set aside by the House, which would not be true.

Mr. Speaker replied:

I cannot take that view. The House stands guardian of its own Privileges. If the House feels that it should insist on the Privilege point on any of these Amendments, Hon. Members can express themselves by voting against the block Motion. There is no other way in which it can be done [HON. MEMBERS: "Oh!"], no, not if the House votes for the block Motion. These matters are for the control of the House. They are not in my control. The Motion is not out of order in that regard.

Mr. Attlee (Walthamstow, W.), the Leader of the Opposition, submitted that if these matters of privilege were bound up with a whole lot of extraneous matters, no decision on privilege would in fact be taken by the House.

After further submissions in this sense by Mr. Paget (Northampton) and Mr. Morrison, Mr. Speaker ruled:

So far the point of order raised is concerned with the Privilege attaching to certain Lords Amendments. I have drawn the attention of the House to those Amendments and, if necessary, I can do so again. But having considered the matter with the best care I can, I am forced to the conclusion that if the House agrees to the Amendments, either *seriatim* or, as here proposed, *en bloc*, it does, by agreeing to the Lords Amendments, waive its Privileges. Then all that can be done to protect the future is to see that a special entry is made in the Journals. The House may take it as an additional reason for voting against Amendments *en bloc* that they do raise questions of Privilege which it may not be prepared to waive, but, on the other hand, I am quite sure that if this procedure is followed and the House votes *en bloc* for the Amendments and carries them by a majority, that is a decision of the House and Privilege, as far as it is applicable, is waived.

(514 *Com. Hans.*, cc. 1769-78.)

This discussion had a sequel on 5th May in the Lords, when Lord Stansgate called attention to the "new powers and responsibilities

accruing to this House in consequence of recent changes in legislative procedure ". Lord Stansgate's argument was that since the Government majority in the Commons was too small to allow for the full quota of Standing Committees to be manned, the Transport Bill in that House had had to be considered in Committee of the whole House, and that it had, therefore, been necessary for the Government to apply the guillotine much more drastically to the Bill. This had resulted in an extraordinary number of amendments having to be considered by the Lords, on points which had not been discussed in the Commons at all; and many of the amendments which the Lords had, in consequence, made to the Bill—including several financial amendments—had been guillotined in the Commons, with the result that several parts of the Bill had not been debated at all by the elected representatives of the people.

The Government's reply, given by Lord Swinton, was that—

(1) in the Labour Party's Transport Bill of 1947 there had been 35 clauses never discussed in the Commons, whereas the total number of clauses in the present Transport Bill was only 34.
(2) none of the Lords' amendments to this Bill had been divided upon in the Commons.
(3) the element of privilege in the Lords' amendments was only incidental, and the making of financial amendments by the Lords was nothing new, but had been recognised for decades as a necessary and desirable procedure.
(4) many of the amendments—as was normal in such cases—had been introduced in the Lords in order to meet points raised in the Commons or elsewhere and were genuine attempts on the part of the Government to improve the Bill.

For these reasons Lord Swinton did not think that the power of the Lords had been in any way increased of late, and to this Lord Samuel, Leader of the Liberal Party, agreed. (182 *Lords Hans.*, 228.)

House of Commons (" Proceedings on a Bill " to include Lords Amendments).—On 24th November, 1952, an allocation of time order made in respect of the Transport Bill made provision for subsequently varying or supplementing its own terms, if this were found to be necessary. It provided that the proceedings on any such Motion for the variation of the original order should be brought to a conclusion two hours after they had been commenced. (508 *Hans.*, cc. 48-50.)

On 27th April, 1953, a Motion was moved for the purpose of imposing a time limit upon the discussion of the Lords Amendments to the Bill, which had not been covered by the original allocation of time order. Mr. Herbert Morrison (Lewisham, S.) submitted that the discussion on this Motion could not be limited to two hours, since the original Order had applied to the proceedings of the House

until the Bill had been passed. The consideration of Lords Amendments, which took place at a much later stage, was not mentioned or foreshadowed in the original order and therefore any provision made for it could not be treated as a mere variation or supplementation of that order. (514 *Hans.*, cc. 1780-4.)

Mr. Speaker ruled as follows:

The Motion before the House is founded on the Order of the House of 24th November. That Order commences with the words:

> " That the following provisions shall apply to the remaining Proceedings on the Transport Bill ".

The Order then sets out the number of days allotted for the stages of the Bill; Committee, Consideration and Third Reading. The first 14 paragraphs of the Order set out incidental matters governing proceedings on those stages.

Paragraph 15 provides for a Motion moved by a Member of the Government for varying or supplementing that Order, and it is governed, as are the other paragraphs, by the opening words of the Order which I have read. The first question therefore is whether the consideration of the Lords Amendments are remaining proceedings on the Transport Bill? The answer to that must be in the affirmative.

The Order itself makes no allotment of days for consideration of the Lords Amendments, and indeed could not properly do so, because it could not be assumed that in fact the Bill would be amended in the Lords. Nor if it were so assumed could the number and extent of the Amendments be forecast. Paragraph 15 of the Order is therefore drawn in wide terms.

If I may I would step aside and say that I do not know whether the Minister or the House appreciated that when the Bill was going through, but it seems to me that some draftsman had that in mind in this and in previous Orders. Paragraph 15 of the Order is therefore drawn in wide terms and permits a motion supplementing the Order *inter alia* by making an Allocation of Time Order for the consideration of Lords Amendments if there are remaining proceedings on the Transport Bill.

I say again, it is for the House to decide whether this Motion should be passed, but I must Rule that the Motion is procedurally in order.

(514 *Hans.*, cc 1785-6.)

Newfoundland (Rescission of Bill).—On 24th April the Newfoundland House of Assembly passed a new Standing Order (No. 60 (*a*)) providing that when a Bill has been read a third time and passed, the third reading and passing may be declared rescinded by majority vote and the Bill then recommitted; but if a Bill has received Royal Assent, it can only be amended by bringing in another Bill for that purpose.

Kenya (Notice and precedence of amendments to Bills).—On 13th May the Legislative Council substituted for its existing S.O. No. 103 a new Standing Order, which requires every amendment to a Bill to be reduced to writing, signed by the proposer and handed to the Clerk not later than 24 hours before the consideration of the Bill in committee; such amendments are to be printed on the Order Paper in the order in which they have been handed in, apart from amendments proposed by the Member in charge of the Bill, which take precedence. No other amendments may be proposed except by the Member in charge or with the consent of the committee; the Stand-

ing Order does not, however, come into operation where there is an interval of less than 24 hours between the Second Reading of the Bill and its consideration in Committee. (55 *Hans.*, cc. 212-4.)

9. Members' Emoluments and Amenities

House of Commons (Franking of Members' letters to offices of Nationalised Industries).—On 21st July, in a written answer to a question, the Financial Secretary to the Treasury announced that in view of the fact that Members had been encouraged both by the present and the late Governments to write direct to nationalised industries in appropriate cases instead of to Ministers, the use of official paid envelopes by hon. Members would be authorised in future when writing either to the headquarters, regional, area or local offices of nationalised industries on matters arising from their parliamentary duties. (518 *Hans.*, *14-15*.)

Western Australia (Reimbursement of expenses to Members).—An Act to authorise the reimbursement of expenses to Members of both Houses of Parliament was passed during the 1953 session. Ministers of the Crown will not be eligible to draw the expenses provided in the Act. Members of the Parliament of Western Australia are required to travel long distances in the course of their Parliamentary duties, which cause heavy out-of-pocket expenses. As all persons employed by the Government, be they salaried or wages men, are entitled to expenses when their duties compel them to extra expenditure, such as travelling, away-from-home allowances, etc., it was decided to extend this principle to Members, other than Ministers. The Schedule to the Act divides the State into certain groups, and Members will receive expenses according to their group. Metropolitan Members can claim £200 per annum, North-West Members, £400, certain Members representing very large and scattered country electorates, £350, and the remainder of Country Members, £300. These amounts are the maximum that can be claimed in one year. Each Member will be required to lodge his claim each year with the State Treasurer, and may claim the whole or whatever portion he considers to be necessary. Any amounts not claimed in the year they are due cannot be allowed to accumulate until the following year. (*See* Act No. 47 of 1953; *W.A. Parl. Deb.*, 1953, p. 2505; *Leg. Ass. V. and P.*, No. 53 of 1953, p. 328.)

(*Contributed by the Clerk of the Legislative Assembly.*)

India, Central Legislature (Salaries and Allowances of Officers of Parliament).—As a transitional arrangement, it was provided in article 97 of the Constitution that, until determined by law by Parliament, the Chairman of the Council of States and the Speaker of the House of the People were to draw the same salary and allowances as were payable to the Speaker of the Constituent Assembly immediately before the commencement of the Constitution (*i.e.*, 26th

January, 1950), and the Deputy Chairman and Deputy Speaker, the salary and allowances drawn by the Deputy Speaker of the Constituent Assembly. Accordingly, to the Chairman and the Speaker were admissible a salary of Rs. 3,000 per mensem with a sumptuary allowance of Rs. 500 per mensem and the use of a rent-free fully furnished residence in New Delhi, and to the Deputy Chairman and the Deputy Speaker a salary of Rs. 1,500 per mensem for the days they were engaged on work connected with the business of the House and a daily allowance of Rs. 40 as admissible to a Member of either House of Parliament. Under the Salaries and Allowances of Officers of Parliament Act, 1953 (No. 17F), which equates the position of the Chairman and Speaker to that of a Cabinet Minister as respects their salaries and allowances and other facilities, the Chairman and the Speaker now receive each a salary of Rs. 2,250 with a sumptuary allowance of Rs. 500 per mensem and a rent-free furnished residence in New Delhi, and the Deputy Chairman and the Deputy Speaker each a salary of Rs. 2,000 per mensem with a rent-free furnished residence.

(*Contributed by the Secretary of the Lok Sabha.*)

Southern Rhodesia (Members' Salaries, Allowances and Pensions).—During the session a Select Committee was appointed to examine the question of salaries, allowances and pensions of Ministers, Mr. Speaker and Members of Parliament (*Votes*, 1953, p. 2). Its Report (*ibid.*, p. 191) recommended, *inter alia*, (*a*) the grant of a pension of £3,000 a year to the retiring Prime Minister, the Rt. Hon. Sir Godfrey Huggins, C.H., K.C.M.G., (*b*) the repeal of the Ministers' Salaries and Pensions Act, 1948, without prejudice to those Ministers already receiving pensions, (*c*) salaries to Members of Parliament at the existing rate of £750, and (*d*) certain new allowances. The recommendation in regard to the retiring Prime Minister's pension was adopted, and was incorporated in the Pensions (Further Supplementary Provisions) Act, No. 55, 1953, while the remaining recommendations were referred to the Government for consideration.

Subsequently, the Ministers', Speaker's and Members' of Parliament Salaries and Allowances Bill (A.B. 59, 1953) was introduced and passed. This, with one or two minor exceptions, gives effect to the Select Committee's recommendations. The Act, which will come into operation in 1954, after the general election in January, provides as follows:

	Salary.	*Allowance.*	*Constituency Allowance.*	*Subsistence Allowance.*
	£	£	£	
Prime Minister	3,000	750	—	—
Ministers	2,750	500	—	—
Speaker (if a M.P.) ...	1,500	250 (*a*)	50-200 p.a. (*c*)	£2.2.0 a day (*d*)
(non-Member)	1,500 (*b*)	250 (*a*)	—	£2.2.0 a day (*d*)
Deputy Speaker ...	1,250	—	50-200 p.a. (*c*)	£2.2.0 a day (*d*)
Leader of Opposition ...	750	500 (*e*)	50-200 p.a. (*c*)	£2.2.0 a day (*d*)
Other Members ...	750	—	50-200 p.a. (*c*)	£2.2.0 a day (*d*)

(*a*) Entertainment.
(*b*) Mr. Speaker may be elected from outside the House.
(*c*) Sliding scale according to area of constituency.
(*d*) During session, paid to those living more than 25 miles from Parliament.
(*e*) Special to Leader of Opposition.
All allowances are tax free.

The Select Committee recommended in addition that there should be no provision for pensions to Members of Parliament on either a contributory or a non-contributory basis.

(*Contributed by the Clerk of the Legislative Assembly.*)

XXII. SOME RULINGS BY THE CHAIR IN THE HOUSE OF COMMONS, 1952-53

COMPILED BY THE EDITORS

The following Index to some points of Parliamentary procedure, as well as Rulings by the Chair, given in the House of Commons during the Second Session of the Fortieth Parliament of the United Kingdom of Great Britain and Northern Ireland (1 and 2 Eliz. II), is taken from Volumes 507 to 518 of the Commons *Hansard*, 5th series, covering the period 4th November, 1952, to 29th October, 1953.

The respective volume and column reference number is given against each item, the figures in square brackets representing the number of the volume. The references marked by an asterisk are rulings given in Committee of the whole House.

Minor points of procedure, or points to which reference is continually made (*e.g.*, that future legislation should not be discussed on a Motion for the adjournment), 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.

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—responsible for accuracy of statements [512] 1801
—*should be given a hearing if rises and is called [509] 1756
—should not be questioned after he has sat down [518] 1045, 1048-9
—should not make public references to occurrences in private parts of House [514] 1762

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—*having risen, practice to call [508] 1681-2
—not responsible for statements by other people or in Press [517] 2049
—or in newspaper cartoons [518] 2439
—permitted owing to infirmity to remain standing while answering questions [510] 1999

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—private Members' ballot for
—book may be signed up to time ballot is taken [511] 1241
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—alleged forcible pulling of Member into Lobby during a division [511] 1920-2
—booing grossly out of order [508] 1566
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XXIII. EXPRESSIONS IN PARLIAMENT, 1953

The following is a continuation of examples of expressions in debate allowed and disallowed which have occurred in 1953. Expressions in languages other than English are translated where this may be succinctly done; in other instances the vernacular expression is shown, with a rough translation appended. The Editors have excluded a number of instances submitted to them where an expression has been disallowed, not because it is intrinsically objectionable, but because of its implications.

Allowed

"ashamed". (1953 *Madras Leg. Co. Hans.*, Vol. V., 660-1.)
"farce". (1953 *Madras Leg. Co. Hans.*, Vol. IX., p. 490.)
"guts" ("if the rt. hon. Gentleman had the guts to do so"). (517 *Com. Hans.*, 1881-2.)
"insinuate". (1953 *Can. Com. Hans.*, 1223.)
"irresponsible". (1953 *Can. Com Hans.*, 869-70.)
"speech smacked of hypocrisy". (516 *Com. Hans.*, 280-1.)
"stupid". (*Nigerian H.R. Hans.*, 3rd March—1st April, 331.)
"tale". (511 *Com. Hans.*, 2074.)
"trickstery". (117 *Uttar Pradesh Hans.*, 441.)
"unclean". (514 *Com. Hans.*, 1205.)
"you know that is untrue". (81 *Union Assem. Hans.*, 1041.)

Disallowed

"abysmal depths". (*India H. of P. Debates*, 12th May.)
"acts of dishonesty". (*India H. of P. Debates*, 4th August.)
"baseless". (124 *Uttar Pradesh Hans.*, p. 213.)
"bestial". (*India H. of P. Debates*, 1st May.)
"bloody lie". (514 *Com. Hans.*, 1574.)
"born to a foreigner" (applied to a Member). (*India, H. of P. Debates*, 19th February.)
"cads". (516 *Com. Hans.*, 395.)
"cesspool methods". (1953 *Can. Com. Hans.*, 65.)
"cheat". (23 *Bombay Hans.*, 144.)
"cheeky young pup". (522 *Com. Hans.*, 623.)
"crabs in a barrel". (1952-53 *Trinidad Hans.*, 445.)
"crafty" (applied to the Report of a Committee). (1953 *S. Rhod. Hans.*, 1715.)

"criminal". (1952-53 *Trinidad Hans.*, 835.)
"damned lie". (518 *Com. Hans.*, 1430.)
"damned wrong". (*W. Nigeria Hans.*, 19th-29th January, 175.)
"deafness of Treasury benches". (*India H. of P. Debates*, 5th March.)
"definite untruth". (81 *Union Assem. Hans.*, 92.)
"degrade himself" (of a Minister). (*India H. of P. Debates*, 11th March.)
"deliberately mislead the House". (299 *N.Z. Hans.*, 110.)
"devil quoting scripture". (23 *Bombay Hans.*, 1347.)
"devils", "devilish mentality". (23 *Bombay Hans.*, 485.)
"dishonest". (510 *Com. Hans.*, 1395.)
"distortion". (1952-53 *Trinidad Hans.*, 947.)
"dogs, etc.". (111 *Uttar Pradesh Hans.*, 29.)
"false". (23 *Bombay Hans.*, 663.)
"filibustering". (514 *Com. Hans.*, 1205.)
"gadahe aur nakabil" (applied to a Minister, meaning "an ass and one who is fit for nothing"). (*Bihar L.A. Debates*, 6th April.)
"get back to the gutter". (299 *N.Z. Hans.*, 179.)
"gutless wonders". (1953 *S. Aust. L.A. Hans.*, 611.)
"gwala" (literally "milkman", but imputing low caste). (*Bihar L.A. Debates*, 6th April.)
"Hitler and Goebbels" (applied to Members). (*Bihar L.A. Debates*, 19th March.)
"hypocrite", "hypocritically pretend". (516 *Com. Hans.*, 396, 477.)
"incorrect and you know it". (299 *N.Z. Hans.*, 304.)
"irresponsible Member". (VII *W. Bengal Hans.*, No. 1, p. 518.)
"jiggery-pokery". (55 *Kenya Hans.*, 135.)
"lie", "lying". (517 *Com. Hans.*, 73: 1953 *Can. Com. Hans.*, 4226.)
"locusts from Pakistan". (*India H. of P. Debates*, 4th March.)
"mastery at misrepresentation". (1953 *S. Aust. L.A. Hans.*, 614.)
"menace to Parliament". (1953 *Can. Com. Hans.*, 4219.)
"monkey". (*India H. of P. Debates*, 13th March.)
"mulish tactics". (125 *Uttar Pradesh Hans.*, 166.)
"nonsense". (1952-53 *Trinidad Hans.*, 433.)
"organised mendacity". (299 *N.Z. Hans.*, 20.)
"personal experience of the police" (with reference to a Member). (*India H. of P. Debates*, 30th March.)
"playing to the gallery". (23 *Bombay Hans.*, 503.)
"plunder and rob". (*W. Nigeria Hans.*, 19th-29th January, 193.)
"political dishonesty". (299 *N.Z. Hans.*, 197.)

"pretentious behaviour" (but only when applied to a Member). (125 *Uttar Pradesh Hans.*, 27.)
"ridiculous". (VII *W. Bengal Hans.*, No. 3, p. 135.)
"shut up". (VII *W. Bengal Hans.*, No. 1, pp. 451, 585.)
"stooge question". (513 *Com. Hans.*, 1416.)
"stupid". (1952-53 *Trinidad Hans.*, 857.)
"sub-standard Country Members". (1953 *S. Aust. L.A. Hans.*, 616.)
"treachery". (*Bihar L.A. Debates*, 19th March.)
"treating Parliament with contempt". (1953 *Can. Com. Hans.*, 4219.)
"twisting". (82 *Union Assem. Hans.*, 844.)
"untrue", "untruths". (512 *Com. Hans.*, 1560; 299 *N.Z. Hans.*, 20, 248, 255; 1952-53 *Trinidad Hans.*, 740.)
"unworthy". (*India H. of P. Debates*, 28th April.)
"unworthy of position . . . of supposedly responsible Minister". (1953 *Can. Com. Hans.*, 3035.)
"vindictive". (*W. Nigeria Hans.*, 30th January-6th May, 415.)
"work in league". (23 *Bombay Hans.*, 1258.)

Borderline

"ass" (not heard by Chair). (514 *Com. Hans.*, 1941.)

XXIV. REVIEWS

European Parliamentary Procedure. A comparative handbook, by Lord Campion and D. W. S. Lidderdale. (Published by George Allen and Unwin on behalf of the Inter-Parliamentary Union. 30*s*.)

The years since the end of the second great war of this century have been full of obvious political disappointments for Europe; but in the future they may be looked back on as years of marked institutional progress, of which the effects are only now beginning to be realised. In spite of their difficulties and weaknesses, international institutions of many kinds, relying on the imaginative support of a few outstanding minds in each country, have grown in strength and authority. It is not without significance, for example, that the all too lean library of works on comparative procedure should be enriched by a book published by the Inter-Parliamentary Union, on behalf of the Autonomous Section of Secretaries-General of Parliaments and written for that international body by Lord Campion and by Mr. D. W. S. Lidderdale, after consultation with their colleagues in a dozen parliaments, ranging from Finland in the north

to Egypt in the south. A pedant might complain that Egypt cannot rightly be included in Europe; yet authors in Africa are often at pains to exclude the rim of Mediterranean lands from Africa proper and it need cause no surprise that the joint authors of this work have decided to embrace Egypt within the scope of the continent with whose history and institutions it is inseparably linked.

Within the limits of 269 pages, the authors have presented a remarkably clear general picture of the form and proceedings of each parliament, together with comparative tables of such interesting details as the usual hours for meeting of committees in each country, showing, incidentally, that Norway leads with a "usual time" of 9 a.m., and that committees in Belgium and the United Kingdom are the latest to assemble. It was not the purpose of the authors to draw deductions from the material collated in this handbook; but their method of comparison—and an excellent index—together invite such deduction. The basic antithesis between parliament and the executive may be studied in all its degrees of compromise or conflict in the position of Ministers in the various parliaments surveyed. The United Kingdom seems to be alone in forbidding a Minister to appear before the other House—a practice which even the closely related Irish parliament permits—yet this restriction, which involves much duplication of work by an administration, is balanced by the exceptional advantage of full rights of membership in one or other legislative Chamber, including especially that of voting. In most European parliaments, where the theory of the separation of powers continues to a greater or less extent to govern practice, the ministerial position is much weaker. In France, the National Assembly subjects Ministers to important restrictions in their membership, notably by preventing them from moving amendments to legislation, at least in their own names. In Norway, a Minister must yield his voting power and other rights of membership to a substitute; while in the Netherlands a Minister cannot be a member of either legislative chamber. These variations are obviously of great constitutional significance; what is remarkable is that nothing on the scale of this professional handbook has been published till now. Indeed, the only criticism of the work is that its scope should be wider and in particular that the procedure of the German Parliament at Bonn should be included in the survey. When the German Parliamentary Council met at Bonn on 1st September, 1948, to devise a new parliamentary system, the Allied Governments appointed advisers, but did not enlist for this purpose the experience of the Secretaries-General or Clerks of any Parliament. Perhaps as a direct result of this omission, the German Parliament embodies many curious features. For example, Ministers sit in para-military formation on a stage several feet above the heads of the representatives whose function it is to control them—an arrangement which experienced parliamentarians would be unlikely to endorse.

A commentary by the authors would have given the book the added value of their own intimate experience of the working of continental and British institutions. Such a commentary has been printed elsewhere (*vide* "Parliamentary Affairs", Spring, 1953: Article by Lord Campion on European Parliamentary Procedure), and its conclusions point to a striking difference in operation between the British parliament and the continental assemblies, with the Parliament of France as their prototype, in spite of a general similarity of pattern. The reasons for the difference in operation lie in the existence of two elements which are not strictly procedural—the party system and the distinction between a single and a disunited, multiple Opposition.

(*Contributed by the Second Clerk-Assistant of the House of Commons.*)

House of Commons: Report on Procedure, by A. A. Tregear, Clerk-Assistant of the House of Representatives, Canberra (Parliament of the Commonwealth of Australia, 1951-52-53, No. 200, 3*s*. 6*d*.).

Three Brochures entitled (1) *Some salient points of Parliamentary Privileges as applicable to Indian Legislatures*, (2) *Points of Order—the stage at which they can be raised and their merits and scope, and* (3) *The selection of speakers and the allocation of time by the Speaker*, by R. N. Prasad, Secretary of the Legislative Assembly, Bihar (Bihar: L.A. Nos. 79, 86 and 87).

Although the papers by these two authors differ widely in form and scope, their common object is to assist Members (in Canberra and Patna respectively) to improve their knowledge of their own procedure by comparison with that of other legislatures; moreover, they are all official publications.

Mr. Tregear, who spent twelve months working in the House of Commons, describes in twenty-two chapters the course of different aspects of public business in the Commons in Session 1951-52, allotting one chapter to each. This goes far beyond a mere sessional diary, however, in that the various items of business are carefully correlated with the standing orders which affect them; at the end of each chapter a table is appended, in which those standing orders with which the chapter has been concerned are analysed and compared with their Australian equivalents. Thus, although the detailed list on pp. 8-9 of matters considered that Session in Committee of Supply is untypical in that there were no Excess Votes, the reader's attention is drawn elsewhere (in the analysis of S.O. No. 16, and the very full and clear description of the working of the Public Accounts Committee) to the Commons' method of dealing with this form of "financial sin", as Erskine May describes it. There is, on the other hand, very little reference to privilege, a matter which is not covered by Standing Order; the Committee of Privileges is

mentioned, but its operation is not described in any detail, since the only case of privilege which arose during the Session was disposed of without being referred to the Committee. The author cannot be blamed for such a happy accident.

Perhaps the most outstanding chapter is that on financial procedure, in which the author has extracted and distilled in thirteen pages the essence of this complex subject; by constant reference to example he avoids any tendency to over-simplification. Indeed, the whole work is admirably lucid and meticulously accurate, and it is clear that the author's year of study was as profitable to him and his readers as it was pleasurable to his colleagues at Westminster.

Mr. Prasad, in his three small volumes, has drawn together a collection of precedents and utterances on the subjects which he has chosen from the Chairs of numerous Parliaments. This he has achieved with great erudition, accompanied by a remarkable lightness of touch. Although the treatise on privilege, as its title implies, is written with an eye mainly to Indian legislatures, the author shows himself continually mindful of the historical development of privilege in the Parliament of the United Kingdom. By Article 194 of the present Constitution of India, the powers, privileges and immunities of state legislatures were equated in the first instance to those of the House of Commons, until otherwise defined by enactment of the individual legislatures; Mr. Prasad observes that no such enactment has yet been made in Bihar. Indeed, the detailed procedure of the Assembly on matters of privilege seems to follow closely the United Kingdom model, the only substantial difference lying in the power of the Speaker in Bihar, if satisfied that there is a *prima facie* case of the breach of any privilege, to refer the question to the Committee of Privileges on his own initiative.

The spirit which infuses the booklet concerning "Points of Order" would, we feel sure, be greeted with wholehearted approval by the occupant of the Chair in any Assembly in the world. "Members", says Mr. Prasad, "often raise points of order on anything they like, caring little to look to its implication. A point of order, as a matter of fact, must relate to the procedure." Numerous rulings from numerous legislatures bear out the truth of this contention.

The third brochure deals with all that is implied in the process of "catching the Speaker's eye". Few Assemblies, we fear, could ever exercise the sublime self-discipline of the House of Lords, which determines the order of its speakers without benefit of any intervention from the Chair; once the necessity for such intervention is recognised, the power of the Chair becomes greatly enhanced, and the logical conclusion of the process is complete discretion, subject only to a vote of censure upon the Chair by the House. This is fully recognised both in the House of Commons and in the Indian Assemblies from whose proceedings Mr. Prasad draws his quotations.

We are prompted to ask whether other such publications as these

are being produced elsewhere within the countries of our membership. Although it is clear that every independent legislature must, in the fullness of time, develop its own independent procedure, the study of the procedures of other legislatures is always valuable to those who have to explore the possible ways of interpreting and defining those of their own; this is especially true when the procedures concerned have a common origin. We hope that the examples of Mr. Tregear and Mr. Prasad will prompt other Members to write similar works of analysis and comparison—and, further, that having written them, they will send a copy to us for reference and review.

XXV. THE LIBRARY OF THE CLERK OF THE HOUSE

By the Editors

The following books, recently published, deal with parliamentary and constitutional matters and may be of interest to Members:

Our Parliament. By *Strathearn Gordon*. (Fourth and enlarged edition.) Hansard Society, London. 15*s*.

The British Party System. Edited by *Sydney D. Bailey*. (Second edition.) Hansard Society, London. 12*s*. 6*d*.

Parliamentary Government in Southern Asia: An introductory essay on developments in Burma, Ceylon, India and Pakistan, 1947-52. By *Sydney D. Bailey*. Hansard Society, London. 9*s*.

The Upper House: The People's Safeguard, 1856-1953. By *Sir Henry Manning*. New South Wales Constitutional League, G.P.O. Box 1743, Sydney.

Orders of the Day. By *Lord Winterton*. Cassell, London. 21*s*.

The Changing Law. By *Sir Alfred Denning*. Stevens, London. 10*s*.

Documents and Speeches on British Commonwealth Affairs, 1931-1952. Edited by *Nicholas Mansergh*, Oxford, for the Royal Institute of International Affairs. 2 Vols. £4 4*s*.

Local Government [in West Africa]. By *Ronald E. Wraith*. Penguin Books, London. 1*s*. 6*d*.

A Short History of Parliament, 1295-1642. By *Faith Thompson*. University of Minnesota Press, Minneapolis, U.S.A. [London, Oxford University Press. 36*s*.]

Thoughts on the Constitution. By *L. S. Amery*. (Second edition.) Oxford. 10*s*. 6*d*.

European Parliamentary Procedure. By *Lord Campion* and *D. W. S. Lidderdale*. Allen and Unwin, London. 30*s*.

The American System of Government. By *John H. Ferguson* and *Dean E. McHenry*. (Third edition.) McGraw Hill, New York and London. £2 8*s*.

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Office of the Society

Palace of Westminster, London, S.W.1.
Editors for Volume XXII of the JOURNAL: R. W. Perceval and C. A. S. S. Gordon.

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 TABLE.

Ackermann, W.—Clerk-Assistant of the Transvaal Provincial Council; *b.* Cape Town, 11th December, 1917; *ed.* Swellendam in S.W. Cape Province (finished High School, 1935); joined Banking Service, 1936; transferred to Public Service, December, 1937, starting in the General Section of the Transvaal Provincial Administration; appointed to present post, 19th May, 1953.

Addison, W. R. L., M.C.—Clerk of the Central Legislative Assembly, East Africa High Commission; *b.* 1919; *ed.* Haileybury College and Queen's College, Oxford, M.A.; Military Service 1939-

* Barrister-at-Law or Advocate.

46, major; cadet, Uganda, 1948; A.D.O., 1950; Assistant Secretary E.A.H.C., 1952; appointed to present position, 1951.

Ayensu, K. B.—Deputy Clerk to the Legislative Assembly, Gold Coast; *b.* Sekondi, Gold Coast, 17th January, 1921; *ed.* Adisabel College, Cape Coast, 1933 to 1938, and Hertford College, Oxford, 1943 to 1946 (B.A., Honours in Jurisprudence); Assistant Registrar of Co-operative Societies, 1946; entered private business, 1949; appointed to present position, 1953.

Ayyar, A. J. Sabesa, M.A.—Assistant Secretary to the Madras Legislature; post-graduate of Madras University; served for about 30 years in Madras Legislature Department; appointed to present position, 1954.

Belavadi, S. H.*—Secretary, Bombay Legislature Department; practised as an Advocate on the Appellate Side of the High Court, Bombay, from 1937 to 1946; appointed Deputy Registrar and Sealer of the High Court, January, 1946; Special Officer, Bombay Legislature Department from 16th March, 1953; took over charge of the post of the Secretary, Bombay Legislature Department, on 1st November, 1953.

Crum Ewing, Alexander Irving.—Clerk of the Legislature, British Guiana; *b.* 16th December, 1908, at Georgetown, British Guiana; *m.*; 4 *ds.*; appointed to Treasury, British Guiana, 1928; transferred to Colonial Secretariat, British Guiana, 1943; Clerk, Executive and Legislative Councils, 1945; Principal Clerk, Secretariat, and Clerk of Councils, 1950; appointed to the post of Clerk of the Legislature created under the 1953 Constitution to handle the affairs of the State Council and House of Assembly.

Donough, Lionel W., M.B.E.—Clerk of the Legislative Council, Singapore; *b.* 1906; *ed.* St. Joseph's Institution, Singapore; Clerk, Colonial Secretary's Office, 1922; Chief Administrative Officer, Dept. of Supply, Malaya, 1941; interned by Japanese during Occupation of Singapore, 1942-1945; M.B.E., 1946; Deputy Supt. of Census, Malaya, 1947; Clerk of Councils, 1948; Colonial Administrative Service, 1950; short attachment to Dept. of the Clerk, House of Commons, 1950-1951; appointed to present position, 1951.

Fredericks, C. A.—Clerk of the Legislative Council, Federation of Malaya; *b.* Kuala Lumpur, Selangor, 10th July, 1911; *ed.* St. John's Institution, Kuala Lumpur, Selangor; appointed to present position, February, 1954.

Gordon, D. J.—Clerk-Assistant of the House of Commons; *b.* 1900; *ed.* Edinburgh Academy and Balliol College, Oxford; Clerk in the House of Commons, 1924; Second Clerk-Assistant, 1948; appointed to present position, 1954.

Hanumanthappa, T., B.A.(Hons.), B.L.*—Deputy Secretary to the Madras Legislature; took B.A.(Hons.) degree at Mysore University and Law Degree from Madras University; practised at Bar in

* Barrister-at-Law or Advocate.

Bellary, Madras State, for a short period; served as Lieutenant in Madras Civil Pioneer Force during Second World War; appointed Assistant Secretary to the Madras Legislature, April, 1946; appointed to present position, 1954.

Merwe, J. G. van der.—Clerk of the Transvaal Provincial Council and Executive Committee; *ed.* Koffiefontein High School and Grey University College; appointed to editorial staff of a daily newspaper, January, 1934; joined Public Service as a Clerk in the Inland Revenue Department, Pretoria, November, 1935; Private Secretary to the hon. the Administrator of the Transvaal, February, 1942; Senior Clerk in the Local Government Branch of the Transvaal Provincial Administration, October, 1949; Clerk-Assistant of the Transvaal Provincial Council and Executive Committee, January, 1951; appointed to present post, May, 1953.

Moutou, Louis Rex.—Clerk of the Legislative Council, Mauritius; *b.* 13th January, 1911; *ed.* Royal College, Mauritius; joined the Service in 1933; Special Grade Clerk, Secretariat, 1945; Clerk-Assistant, 1949; appointed present position, February, 1952.

Pogson, Trevor Reid.—Clerk of the Tanganyika Legislative Council; *b.* 1922; *ed.* Christ's College, Christchurch, New Zealand; Magdalen College, Oxford; appointed Administrative Officer ("Cadet"), Tanganyika, 1946; District Officer, 1948; seconded to present position, 1952.

Prud'homme, Charland.—Clerk of the Manitoba Legislative Assembly; *b.* Winnipeg, Manitoba, November, 1904; attended St. Boniface College and University of Manitoba; B.A., 1926; Law School LL.B., 1930; called to the Manitoba Bar, 1930, and admitted as solicitor, 1930; joined the Manitoba Civil Service in 1930; from 1930 to 1939 in charge of the Corporations Taxation Act; from 1939 to 1949, Registrar of Companies; appointed Chief Electoral Officer, 1949, and Clerk of the Legislative Assembly in 1951; the Clerk combines the position of Chief Electoral Officer, and also has responsibilities in the Attorney-General's office as Assistant to the Inspector of Legal Offices; *m.*, and resides in St. Boniface, Manitoba.

Rao, M. Hanumanth, M.A., H.C.S.—Secretary of the Legislative Assembly Department, Hyderabad; *b.* 3rd April, 1911; Munsif Magistrate, 1935; District Magistrate and Judge, 1946; Deputy Secretary to Government (Judicial) Home Department, April, 1950; Judge of the Industrial Court and Member of the Preventive Detention and Public Security Measures Advisory Boards, May, 1950; appointed to present post, February, 1952.

Saksena, R. R.—Assistant Secretary, Legislative Assembly, Uttar Pradesh; *b.* June, 1908, at Budaun; *ed.* at Lucknow and Madras Universities and obtained degrees of M.A., LL.B., D.L.Sc.; did research in the Lucknow University for Ph.D. degree on "Parliamentary Procedure in India" for several years; first appointed as

Assistant in the Uttar Pradesh Legislative Council Department in 1932; obtained training in the Government of India in 1935 in Statutory drafting and budgetary procedure; permanently promoted to the post of Superintendent in 1946 and later promoted as Officer on Special Duty (Estimates Committee); appointed to present post in 1952; author of "Handbook of Indian Legislature" (1937, 4 editions), "Chairman's Guide", 1942, and "Assembly Handbook", 1946.

Sidiki, Muhammad Hanif, B.A.(Hons.), LL.B.*—Secretary to the Sind Legislative Assembly; *b.* 19th April, 1904; Bachelor of Arts (Honours) and Laws of the Bombay University; practised at the Bar; Public Prosecutor; entered Service in November, 1950; Member of Sind Judicial Service; District and Sessions Judge; now Secretary to Government, Legal Department, and Remembrancer of Legal Affairs.

Viljoen, Jacobus Pieter Marais.—Clerk-Assistant of the South-West Africa Legislative Assembly; *b.* Molteno, C.P., October, 1925; joined the Public Service in Pretoria in July, 1942, and served in the Military Section of the Department of Pensions; in May, 1949, became Secretary of the Military Pensions Appeal Tribunal and served as such until transferred to present position in April, 1954; promoted from 2nd to 1st Grade Clerk on 1st September, 1950.

* Barrister-at-Law or Advocate.

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PRINTED IN GREAT BRITAIN BY
BILLING AND SONS LTD.
GUILDFORD AND LONDON
G9019