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 XXIV

for 1955

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USUAL PARLIAMENTARY SESSION MONTHS

Parliament.	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
United Kingdom	★	★	★	★	★	★	★			★	★	★
Northern Ireland	★	★	★	★	★	★	★	★		★	★	★
Channel Is. — Jersey	★	★	★	No settled practice.								
Channel Is. — Guernsey	No settled practice.											
Channel Is. — Alderney	No settled practice.											
Canada — Federal Parliament	★	★	★	★	★	★					★	★
Canada — Ontario		★	★							★		
Canada — Quebec	★	★	★	★	★	★						
Canada — Nova Scotia			★	★								
Canada — New Brunswick			★	★								
Canada — Manitoba		★	★	★								
Canada — British Columbia	★	★	★	★							★	★
Canada — Prince Edward Island		★	★	★								
Canada — Saskatchewan	★	★	★	★								
Canada — Alberta		★	★	★								
Canada — Newfoundland			★	★	★	★						
Australian Commonwealth — Commonwealth Parliament		★	★	★	★	★		★	★	★	★	
Australian Commonwealth — New South Wales	No settled practice.											
Australian Commonwealth — Queensland			★	★				★	★	★	★	★
Australian Commonwealth — South Australia						★	★	★	★	★	★	
Australian Commonwealth — Tasmania			★	★	★			★	★	★	★	★
Australian Commonwealth — Victoria			★	★		★	★	★	★	★	★	★
Australian Commonwealth — Western Australia							★	★	★	★	★	★
New Zealand						★	★	★	★	★		
Western Samoa			★	★				★	★			
Union of South Africa — Union Parliament	★	★	★	★	★	★						
Union of South Africa — Cape of Good Hope			★		★	★						
Union of South Africa — Natal			★		★					★	★	
Union of South Africa — Transvaal			★	★	★	★						
Union of South Africa — Orange Free State			★			★						
South-West Africa			★	★	★							
Ceylon	★	★	★	★		★	★	★	★		★	
India — Central Legislature		★	★	★	★			★	★		★	★
India — Andhra				★			★	★	★	★	★	★
India — Bihar		★	★	★				★	★			★
India — Bombay		★	★	★				★	★		★	
India — East Punjab			★	★						★	★	
India — Madhya Pradesh		★	★					★	★			
India — Madras	★	★	★	★	★	★	★	★	★	★	★	★
India — Orissa		★	★					★	★			
India — Uttar Pradesh	No settled practice.											
India — West Bengal		★	★	★					★		★	
India — Mysore			★	★								
India — Vindhya Pradesh		★	★					★	★		★	
Pakistan — Constituent Assembly			★	★							★	★
Pakistan — East Bengal		★	★							★	★	
Pakistan — West Pakistan												
Central African Federation — Federal Assembly	No settled practice.											
Central African Federation — Southern Rhodesia		★	★			★	★	★				
Central African Federation — Northern Rhodesia		★	★			★	★	★				
Bermuda			★					★				★
British Guiana	No settled practice.											
East Africa High Commission	★	★		★	★	★				★	★	★
Gibraltar			★						★			★
Gold Coast	★	★	★	★	★	★	★			★	★	★
Jamaica			★			★			★			★
Kenya					★					★		
Federation of Malaya, Malta, G.C., and Mauritius		★		★					★	★		
Nigeria — House of Representatives	No settled practice.											
Nigeria — Northern	No settled practice.								★			
Nigeria — Eastern	★	★										
Nigeria — Western	No settled practice											
Singapore			★	★				★		★		
Tanganyika	★	★	★	★	★	★	★	★	★	★	★	★
Trinidad and Tobago B.W.I.			★			★			★			★
Uganda	★	★	★	★	★		★	★		★	★	★
The Sudan	★	★	★	★	★	★	★		★		★	★
			★	★	★					★	★	★

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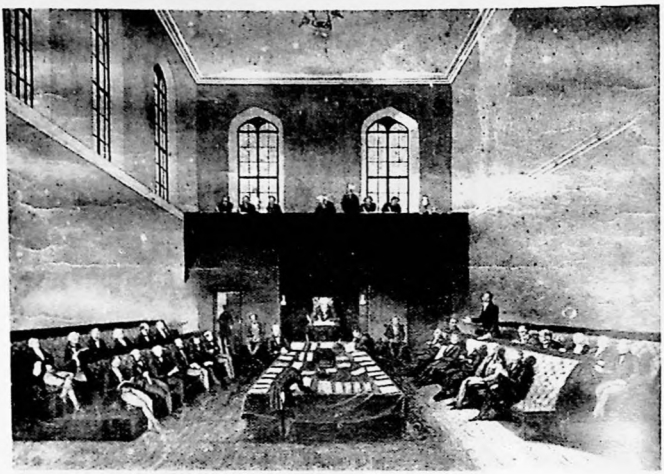

NEW SOUTH WALES

Dr. John Dunmore Lang speaking in the Legislative Council on 13th Jun[illegible] 1844, on his motion for extension of the elective franchise. Alexan[illegible] MacLeay, Speaker. (From a water-colour by F. Janssen.)

NORTHERN TERRITORY LEGISLATIVE COUNCIL

Presentation of Presidential Chair by Parliamentary Delegation on 25th March, 1955. The President of the Senate of the Australian Commonwealth (Senator the Hon. A. M. McMullin) addressing the Council.

The Table

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IN COMMONWEALTH PARLIAMENTS

I. EDITORIAL

Introduction to Volume XXIV.—The first Article in this Volume deals with the Parliamentary aspects of the visit which Her Majesty made to Nigeria in January and February, 1956, and is in three parts. The first, which describes the ceremony performed in the House of Representatives at Lagos, is contributed by Sir Frederic Metcalfe who, besides being a member of the Society, is also Speaker of that House (*see* THE TABLE, Vol. XXIII, p. 15). The other two contributions are from the Clerk Assistant to the Northern Regional Legislature, who describes the ceremony at Kaduna, and the Clerk of the Eastern House of Assembly, whose Article illustrates the events at Enugu.

The information contained in the next Article, which sets forth the procedures of numerous legislatures in the event of a vacancy in the office of their presiding officer, has been provided by members in answers to questionnaires. We were immeasurably assisted by the existence in draft of an Article by Mr. Owen Clough, which he had written on the basis of earlier answers; all that was necessary was to include such amendments and additions as had been made inevitable by subsequent changes in procedure.

Article IV describes the origins and development of the procedure for giving the Royal Assent to Bills passed by the Parliament of the United Kingdom. Until recently this might have been expected to be a matter only of academic interest to other Legislatures, but it will have been observed by readers of Volumes XXII and XXIII that Bills in the Australian and New Zealand Parliaments have recently been assented to by Her Majesty in person.

On several recent occasions reference has been made to the possibility of the reform of the House of Lords; in 1955 that House set up a committee to determine its own powers in relation to the attendance of its Members, in an attempt to discover whether the House already

possessed any powers which might possibly be used for that purpose. The report and recommendations of this committee are described in Article V.

In the House of Commons the General Election of 1955 produced an unusual heavy crop of disqualifications, and it was therefore necessary in several instances to validate the elections of Members who, after they had taken their seats, were discovered to be in enjoyment of what were technically Offices of Profit Under the Crown. We are indebted to Mr. F. G. Allen, the Clerk of the two Select Committees on Elections which were appointed to deal with these cases, for an Article on them. In addition, two of the Members who were elected from constituencies in Northern Ireland were unable to take their seats because they were felons serving sentences of ten years' imprisonment; their seats were therefore contested in Election Petition Courts by the losing candidates. The legal proceedings, and subsequent proceedings in the House, are described in Article VII. It is, we believe, the custom of reviewers of detective fiction to whet their readers' appetite by describing a certain proportion of the plot, but failing to disclose the ultimate solution; it is in the same spirit that we forbear in this Editorial from revealing the curious sequel to the second of these disputed elections (relating to the constituency of Mid-Ulster).

A major revision took place during the year of the Standing Orders of the Canadian House of Commons. This has not been included in the "Miscellaneous Notes", but has been accorded a separate Article.

The Parliamentary calendar of Australia during the year was much enlivened by a spectacular privilege case relating to a newspaper, the *Bankstown Observer*, as a result of which the House of Representatives exercised certain powers, inherited under the Australian Constitution from the House of Commons, which have not been exercised by the latter House for many years. We are glad to be able to print an Article upon the case by the Serjeant-at-Arms of the House of Representatives, who played a notable personal part in the proceedings. A further Article describing some general features of the 1955 sittings has also been contributed by the Clerk of the House of Representatives.

From Australian State Legislatures we have received two further Articles, one of historical and the other of contemporary significance. The Clerk of the Parliaments in New South Wales has taken the opportunity provided by the centenary of the responsible government in that State to consider, in scholarly and illuminating detail, the historical evolution of the system of parliamentary government in that State. The Clerk of the Legislative Council of the Northern Territory has contributed an Article describing the opening of the new Chamber of the Legislative Council, which was built upon the site of the first building in Australia to be destroyed by enemy action during the Second World War.

The Clerk of the Legislative Council for the territory of Papua and New Guinea, whom we are pleased to welcome as a new member of the Society, has written a short Article upon the origins, powers and composition of his Council.

Once more we have great pleasure in thanking the Clerk of the Union House of Assembly for his invaluable annual Article upon Precedents and unusual points of Procedure.

There are two Articles relating to Indian procedure. The first, by the Special Officer of the West Bengal Legislative Assembly, describes the growth of parliamentary procedure in India from the earlier part of the nineteenth century, when the East India Company still played a very active part in the administration of the sub-continent, until the present day. The second, by Mr. S. L. Shakdher, supplements the information given in Article III by a detailed account of the procedure observed in electing the two Speakers who have, up till now, occupied the Chair of the Lok Sabha.

It was decided in 1955, after protracted debate, that Salisbury should remain the capital of the territory of Southern Rhodesia in spite of having become, in addition, the capital of the Federation. Article XVII, by the Clerk of the Southern Rhodesian Legislative Assembly, shortly describes the discussions which led up to that decision. We are grateful to Mr. P. A. Richardson, who in 1956 was the first Clerk of the Nyasaland Legislative Council to join the Society, but who has now been seconded to another position, for the Article which he has contributed on Constitutional Developments in Nyasaland.

The ceremony with which the Second Legislative Council of the Federation of Malaya was inaugurated on 31st August, 1955, is described in an Article by the Clerk of the Council.

In conclusion there is the usual Article on Applications of Privilege, and the Miscellaneous Notes from many Legislatures, followed by the List of Rulings from the Chair of the House of Commons in Session, 1954-55, and Expressions in Parliament in 1955. The List of Speaker's Rulings is unusually short, since the Session was prematurely ended by the General Election of May, 1955.

J. E. Edwards, J.P.—At the final sitting of the Senate (on 9th June, 1955) prior to the adjournment, the President of the Australian Senate (Senator the Hon. A. M. McMullin) paid tribute to the work and service of the Clerk of the Senate, Mr. J. E. Edwards, who would retire from the Commonwealth Parliamentary Service on 21st July, 1955, upon attaining the age of sixty-five years.

The President referred to the extended illness of the Clerk and expressed regret that he was unable to be in his accustomed place at the Table on that day. He outlined Mr. Edward's career in the Commonwealth Public Service which began in August, 1911. His service with the Senate had commenced on 12th July, 1915, and,

after occupying all the Senate offices in turn, he had been appointed Clerk of the Senate on 1st December, 1942.

The President went on to say:

Mr. Edwards filled all his posts with the highest distinction. He brought to his work the advantage of wide reading and great learning; and his knowledge of Senate procedure is remarkable. I feel sure that no man, as Clerk of the Senate, could have enjoyed greater confidence and respect than does Mr. Edwards. Perhaps the best example of this fact was provided during the period prior to the double dissolution of 1951, when the Opposition controlled the Senate. During that difficult period the lot of the Clerk was not an easy one. Both sides of the Senate exploited every one of the Standing Orders in an effort to gain tactical and strategical advantages over the other, and the Chair, the Government and the Opposition all looked to the Clerk for the traditional counsel. That Mr. Edwards was able to emerge from those and other troublous times with enhanced prestige and respect is probably the greatest tribute this Senate can pay to his ability.

During his forty years as an officer of the Parliament, Mr. Edwards has witnessed many dramatic moments, some of far-reaching parliamentary significance, and others now rich in their historical import. He encouraged senators to be jealous of the great legislative powers of the Senate, as, for example, the Senate's right to press a request to the House of Representatives for an amendment of a money bill. In the interpretation of the Standing Orders he encouraged Presidents to lean towards rulings which preserve or strengthen the powers of the Senate rather than towards views which may weaken or lessen the Senate's powers. He witnessed such dramatic moments as the announcements in the Senate of the end of two world wars, when on each occasion the National Anthem was sung, and cheers were given. He heard the longest speech ever delivered in this Senate—a twelve-hour filibuster by Senator Gardiner on the Commonwealth Electoral Bill in 1918.

But I think that, if he were asked, Mr. Edwards would choose the opening of the Commonwealth Parliament by Her Majesty Queen Elizabeth the Second on the 15th February, 1954, as his most treasured memory. To him went the privilege of reading the proclamation and executing the Queen's commands on that historic day when our Parliament was opened for the first time by the Monarch. It was a fitting climax to a distinguished and eventful career as Clerk of the Senate.

The time has now come when, with regret, I must record Mr. Edwards's forthcoming retirement. You, honourable Senators, have made certain contributions for the purpose of making a fitting presentation to him. On your behalf I shall arrange and make this presentation as soon as Mr. Edwards is well enough to receive it, and will let him know that with the present go the respect, affection and good wishes of every member of the Senate.

I conclude my own official tribute to Mr. Edwards by reading the final paragraph of his own book—*Parliament and How it Works*. I quote:

> To conclude, it may be said that to serve as an officer of Parliament is a unique and fascinating occupation. One can feel that he is present at the making of history. He can watch the play of political passions, the ebb and flow of great movements, the pathos and tragedy of lost causes and personal defeats, the rise and fall of personalities, and so on. He can enjoy an election campaign as an interested spectator, watching the fall of the mighty with joy or regret, according to his inmost feelings, which he keeps strictly to himself. If he reaches the retiring age he can write his reminiscences if he feels so inclined. It is a most satisfying life's experience.

I can only add that, if Mr. Edwards has found it a most satisfying life's

experience to serve as an officer of the Parliament, we have found it a most gratifying experience to be members of the Senate during his clerkship.

I tender to both Mr. and Mrs. Edwards the respects of the Senate and the hope that they will enjoy many years of happy retirement.

I shall add a few personal words. I feel that I owe a great deal to Mr. Edwards. When I became President of the Senate, his sound advice, encouragement and guidance were of great assistance to me during the months when I was feeling my way. One thing that he impressed on me was that the Senate is a very different chamber from the other place. His advice was, "Let the debate run. Let it run fairly widely. If you let it run fairly widely and fairly easily, you will get through your work very much better." He also said, "The Senate is a place where you should, perhaps, discuss matters that you would not discuss in another place." He was always ready to give that friendly word of advice, to lean to the weaker person. One leans naturally towards a man who is in trouble. It is natural to lean towards the Opposition because it is the weaker party, but maintaining always that justice must be done. I say quite sincerely to all honourable Senators that I shall always remember with very keen appreciation the kindness that Mr. Edwards has personally extended to me.

The Leader of the Government in the Senate (Senator the Hon. Neil O'Sullivan) endorsed the remarks made by the President and moved:

That on the occasion of the retirement of John Ernest Edwards from the position of Clerk of the Senate, the Senate places on record its appreciation of the long and valuable service rendered by him to the Australian Parliament, and conveys to him good wishes for many years of happy retirement.

The motion was seconded by the Leader of the Opposition (Senator the Hon. N. E. McKenna) and agreed to unanimously. (Senate *Hans.*, 9th June, 1955, pp. 799-802.)

(*Contributed by the Clerk of the Senate.*)

F. C. Green, M.C.—On 25th June, 1955, Frank Clifton Green, M.C., retired from the clerkship of the Australian House of Representatives, after a record term of seventeen years.

He entered the Government Service of Tasmania in 1909, and from the position of Clerk-Assistant and Serjeant-at-Arms in the Tasmanian Legislative Assembly, transferred to the House of Representatives as Clerk of the Papers in 1921.

In 1927 he was appointed Serjeant-at-Arms, and later that year Second Clerk-Assistant. As Clerk-Assistant he was in office from 1927 to 1937, when he became Clerk of the House.

Appreciative references to him on his retirement were made in the House on 10th June, the last sitting before his retirement. The Leader of the House (Sir Eric Harrison) said:

Every honourable Member is indebted to Mr. Green, Ministers at the table no less than other honourable Members. The procedure of this House is very complicated. Its procedure requires, from time to time, a complete understanding of the Standing Orders and rules of the House. When honourable Members are in difficulty, there is only one source to which they can apply for

succour and advice, and that is the Clerk of the House. Mr. Green has always instantly, unselfishly and, sometimes, with great trouble to himself, satisfied honourable Members in the requests that they have made to him.

One of the greatest pleasures that he will have in his retirement, as he looks back to a life of service in this House, will be the knowledge that he has given his service also to the nation and to the people of this great democracy. I am certain that as Mr. Green sits back and reminisces over a very full life, and as he relates some of the excellent stories for which he is noted, he will spare a kindly thought for those of us in this House who are still labouring in the vineyard. I hope that the great hospitality and understanding that Mr. Green has always shown to honourable Members will still be extended to us from time to time, so that we may refresh ourselves mentally at the fount of wisdom. I believe that the House should place on record its great appreciation of the wonderful service Mr. Green has given, not only to the Parliament, but also to the great democracy of Australia.

He was followed by the Leader of the Opposition (Dr. Evatt), who said:

Mr. Green has been a great public servant and a worthy servant of the Parliament. He understands the spirit of the parliamentary institution better than does anybody I know. He understands how the machine must work, and how the life of the whole parliamentary institution depends upon something that cannot be found in May's *Parliamentary Practice* and other parliamentary authorities to which reference is made during the debates in this chamber. It is perfectly true, as the Vice-President of the Executive Council has said, that when honourable Members are in trouble, whether they are in opposition or as supporters of the Government, they fly to Mr. Green for advice. My only regret is that the advice given by Mr. Green has not always been followed. I hope the time will come when Mr. Green will place on record his views on the proceedings of this Parliament over the years. In the meantime, I suggest that his resignation be not completed until the written consent of the Leader of the Opposition accompanies it, in which case that consent will not be given. I wish him well. I wish Mr. Green and his wife all happiness. I hope that both will understand fully how much we appreciate their contribution to the life, not only in and around the Parliament, but also in Canberra.

Tribute was also paid in the following terms by the Chairman of Committes (Mr. Addermann):

As Chairman of Committees, I am a layman controlling procedure, and the help that has been given by the Clerk of the House has been very valuable. It has helped me and my predecessors to act correctly on behalf of the institution we serve in the parliamentary system. I am convinced that the approach Mr. Green has made to the problems of the Chairmen of Committees has always been that so ably expressed by Shakespeare—the good that he can do is the only thanks that he desires. Mr. Green has performed his task very well. He was the first to understand my many imperfections, and the first to give me very valuable help. I wish to thank him, not only on my own behalf, but also on behalf of the Chairmen of Committees whom he has assisted before me.

Several other Members also spoke in recognition of Mr. Green's services. (H.R. *Hans.*, 10th June, 1955, pp. 1665-9.)

Members of both Houses also gathered at a farewell social function, which was attended by the Prime Minister and other Ministers. In a cheerful atmosphere, he was farewelled and given a presentation.

It is interesting to note that a resolution of appreciation of his services was passed by the Legislative Council of the Territory of Papua and New Guinea, a new legislature which, in its establishment, enjoyed the benefit of his helping hand.

He has always been a strong supporter of the practices of the Commons and a firm adherent to the doctrine of the rightful place of Parliament in a democratic government.

For many years a member of this Society and a contributor to THE TABLE, his active companionship will be missed. However, we congratulate him on his meritorious record, and wish him well in his retirement.

(*Contributed by the Clerk of the House of Representatives.*)

A. B. Sparks.—After thirty-three years in the service of the Parliament of Western Australia, Mr. Alexander Bevan Sparks retired from the joint position of Clerk of the Legislative Council and Clerk of the Parliaments on 29th March, 1956.

On 25th November, 1955, being the last day of sitting of the Council before his retirement, tributes were paid to him at the close of the session by the Chief Secretary (Hon. G. Fraser) and the Hon. C. H. Simpson. In conclusion, the President (Hon. A. L. Loton) said:

> As this will be the last occasion on which we will have the present Clerk of the Legislative Council, Mr. Sparks, officiating in this Chamber, I would like to make reference to him for a few moments. Mr. Sparks joined the office staff as Clerk of Records in 1923 and occupied that position until 1936. He was then appointed Clerk Assistant and Usher of the Black Rod, which position he held until 1951.
>
> On the death of Mr. Leake, Mr. Sparks was appointed Clerk of the Legislative Council and Clerk of Parliaments, and has held these positions until the present time. He has served under five Presidents—Sir Edward Wittenoom, Sir John Kirwan, Mr. Cornell, Sir Harold Seddon, and myself.
>
> For health reasons Mr. Sparks has decided to retire, and he advised me early in October that he wished to terminate his term of office as soon as the business of this session concluded. He has at all times been of great assistance to all Members, particularly to those who have had to act as Chairmen of Committees.
>
> I feel that I am expressing the feeling of all Members when I say that we regret he has decided to retire; but now that the decision has been made, we all wish Mrs. Sparks and him many years of good health and happiness.

Mr. Sparks, who served with the Australian Imperial Force in France during World War I, was first appointed to the staff of the Legislative Council in 1923; he was appointed Clerk of the Legislative Council and Clerk of the Parliaments in 1951.

A keen gardener, Mr. Sparks has also devoted a lot of time to music and photography. For many years he was Choirmaster of the

Victoria Park Presbyterian Church Choir, and he has been a tireless worker for his church. His home garden has always been the envy of neighbours and an outstanding example to others in the vicinity. In recent years he has taken up colour photography and frequently entertains friends with a picture evening of his own slides.

Following his retirement, Mr. Sparks, accompanied by his wife, left Western Australia to undertake an extended tour of the Eastern States of the Commonwealth.

(*Contributed by the Clerk of the Legislative Council.*)

L. Clare Moyer, D.S.O., Q.C.—On 11th January, 1956, at the conclusion of business, the Leader of the Senate (Hon. W. Ross Macdonald) referred to the appointment and swearing in the previous day of a new Clerk of the Senate, Mr. John MacNeill, of whom a short biographical note appears on p. 202.

After paying tribute to Mr. MacNeill, Mr. Macdonald went on to say:

He replaces a man who was a very capable Clerk of the Senate, Mr. L. Clare Moyer, D.S.O., Q.C., B.A. Mr. Moyer retired from the position on account of illness, and I know we were all very sorry indeed when we learned that his health would not permit him to continue as Clerk. Mr. Moyer came to this House well prepared for the task which he was called upon to assume. He graduated from the University of Toronto with top honours in political science and worked on several newspapers, starting as a reporter. I think there is no better training for a man who has to deal with people, and who is going to serve in public life, than newspaper work; it gives him a great store of knowledge and information which is of great help later on. After serving in the newspaper field for some time, Mr. Moyer decided to practise law, and he was called to the Bar of Ontario and the Bar of Saskatchewan. He is one of the comparatively few people in Canada who are members of the Bars of two provinces.

In World War I Mr. Moyer joined the forces and served in France, Belgium and Germany. For his gallantry on the field he was twice mentioned in dispatches, and in 1918 was awarded the D.S.O. After demobilization, and having practised law for some time, he was appointed Law Officer for the Attorney-General's Department of Saskatchewan, in which office he served from 1921 to 1922. He then came to Ottawa. He did such good work in acting as secretary to the Dominion-Provincial Conference of 1927 that at the completion of the conference the Prime Minister of the day, the Right Honourable William Lyon Mackenzie King, appointed him as his secretary. Mr. Moyer acted as the Prime Minister's secretary for some considerable time. He was appointed as Clerk of the Senate in 1938. He has rendered splendid service indeed, and I think we would all be very happy to make him an honorary officer of this House. Such a step was taken in 1939 when Mr. Blount retired as Clerk of the Senate. On motion of the Honourable Senator Dandurand, seconded by the Right Honourable Senator Meighen, Mr. Blount was appointed as honorary officer of this House. I feel that we would all be very pleased to have that custom followed in the present instance, and with leave of the Senate I move, seconded by the honourable Leader of the Opposition (Hon. Mr. Haig):

That in view of the long and faithful services of Mr. L. Clare Moyer, D.S.O., Q.C., B.A., the former Clerk of the Senate, he be continued an

honorary officer of this House and allowed the entrée of the Senate and a seat at the Table on occasions of ceremony.

HON. SENATORS: Hear, hear.

The motion was agreed to.

Acknowledgments to Contributors.—We have pleasure in acknowledging articles in this volume from Sir Frederic Metcalfe, K.C.B., Speaker of the Nigerian House of Representatives; Mallam Isa S. Wali, Clerk-Assistant to the Northern Regional Legislature of Nigeria; Mr. A. E. Eronini, M.B.E., Clerk of the Eastern Regional House of Assembly of Nigeria; Mr. F. G. Allen, a Senior Clerk in the House of Commons; Mr. J. A. Pettifer, B.Com., A.A.S.A., Third Clerk-Assistant and Serjeant-at-Arms of the House of Representatives of the Australian Commonwealth; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk of the House of Representatives of the Australian Commonwealth; Brigadier J. R. Stevenson, C.B.E., D.S.O., E.D., Clerk of the Parliaments and Clerk of the Legislative Council of New South Wales; Mr. D. R. M. Thompson, Clerk of the Legislative Council of the Northern Territory; Mr. D. I. McAlpin, Clerk of the Legislative Council of Papua and New Guinea; Mr. J. M. Hugo, B.A., LL.B., J.P., Clerk of the House of Assembly of the Union of South Africa; Shri C. C. Chowdhuri, Special Officer of the West Bengal Legislative Assembly; Shri S. L. Shakdher, Joint Secretary, Lok Sabha Secretariat; Mr. J. R. Franks, B.A., LL.B., Clerk of the Southern Rhodesia Legislative Assembly; Mr. P. A. Richardson, sometime Clerk to the Nyasaland Legislative Council; and Mr. C. A. Fredericks, Clerk of the Legislative Council of the Federation of Malaya.

For paragraphs in Article XX ("Applications of Privilege") and Article XXI ("Miscellaneous Notes") we are indebted to Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk of the House of Representatives of the Commonwealth of Australia; Brigadier J. R. Stevenson, C.B.E., D.S.O., E.D., Clerk of the Parliaments and Clerk of the Legislative Council of New South Wales; Mr. H. Robbins, M.C., Clerk of the Legislative Assembly of New South Wales; Mr. G. D. Combe, M.C., A.A.S.A., A.C.I.S., Clerk of the House of Assembly of South Australia; Mr. E. C. Briggs, Clerk of the Legislative Council of Tasmania; Mr. J. B. Roberts, M.B.E., Clerk of the Parliaments of Western Australia; Mr. E. A. Roussell, LL.B., Clerk-Assistant of the House of Representatives of New Zealand; Mr. J. M. Hugo, B.A., LL.B., J.P., Clerk of the House of Assembly of the Union of South Africa; Mr. D. J. Greyling, Clerk of the Legislative Assembly of South-West Africa; Shri M. N. Kaul, M.A., Secretary of the Lok Sabha of India; Shri S. L. Shakdher, Joint Secretary, Lok Sabha Secretariat; Shri A. J. Sabesa Ayyar, M.A., Deputy Secretary to the Madras Legislature; Shri R. R. Saksena, B.A., Secretary of the Legislative Assembly of Uttar Pradesh; Mr. M. B.

Ahmad, M.A., Secretary of the National Assembly of Pakistan; Colonel G. E. Wells, O.B.E., E.D., Clerk of the Federal Assembly of Rhodesia and Nyasaland; Mr. T. Williams, O.B.E., E.D., Clerk of the Northern Rhodesia Legislative Council; Mr. A. W. Purvis, LL.B., Clerk of the Kenya Legislative Council; Mr. C. A. Fredericks, Clerk of the Legislative Council of the Federation of Malaya; Mr. L. R. Moutou, Clerk of the Mauritius Legislative Council; and Mr. B. A. Manuwa, Clerk of the House of Representatives of the Federation of Nigeria.

II. ROYAL VISIT TO NIGERIA, 1956

1. PRESENTATION OF A LOYAL ADDRESS TO HER MAJESTY THE QUEEN BY THE HOUSE OF REPRESENTATIVES OF THE FEDERATION

By Sir Frederic Metcalfe, K.C.B.,
Speaker of the House of Representatives

On Wednesday, 25th January, 1956, the House of Representatives passed a Resolution, recorded in the Votes and Proceedings as follows:

Resolved, *nemine contradicente*; That an humble Address be presented to Her Majesty as follows:

To the Queen's Most Excellent Majesty.

The Humble Address of the House of Representatives of the Federation of Nigeria.

May it please Your Majesty:

We, Your Majesty's most dutiful and loyal subjects, the Representatives of Nigeria in Parliament assembled, beg leave humbly to offer to Your Majesty our most grateful thanks for the visit which it has pleased Your Majesty to make to our country; and because of the intense feeling of loyalty which this unique occasion has evoked, humbly to ask that Your Majesty may be pleased to give leave to the Honourable Minister of Transport, the Honourable Minister of Communications and Aviation, and the Honourable the Leader of the Opposition to voice the hearty satisfaction and unbounded pleasure which Your Majesty's presence has occasioned to Your loving people and which we, their Representatives, have been unable to express within the confines of this Resolution.

To be presented by the whole House—the Minister of Transport, the Minister of Communications and Aviation and the Leader of the Opposition to know Her Majesty's pleasure when She will be attended. (The Chief Secretary of the Federation.)

Her Majesty subsequently made known Her Pleasure that on Tuesday the 31st January in the House of Representatives She would receive the Address.

On Tuesday, 31st January, 1956, Her Majesty the Queen and His Royal Highness the Duke of Edinburgh drove in state through cheering crowds to the House of Representatives for the presentation of a Loyal Address by the House to Her Majesty.

By 9.45 a.m. all persons to whom tickets were issued for admission to the Galleries had taken their places. Her Excellency Lady Robertson and Miss Caroline Robertson, attended by the Private Secretary, drove to the Macarthy Street Entrance and were received by Lt.-Col. P. H. G. Stallard, M.B.E., and escorted to their places in the Distinguished Strangers' Gallery.

At 10.0 the Speaker entered the Chamber of the House of Representatives in procession and read Prayers. At the same hour the Governor-General, attended by the Military Aide-de-Camp and accompanied by one of Her Majesty's Equerries, left Government House and drove to the House of Representatives preceded by motor-cyclists of the Nigeria Police.

The Governor-General on arrival was met by the Deputy Speaker (The Hon. Bello Dandago, M.H.R.), and the Equerry proceeded at once to the Entrance Lobby behind the Throne where he was to signal the arrival of Her Majesty.

The following persons taking part in the Royal Procession took up positions in the Entrance Lobby to await the arrival of Her Majesty:

The Governor-General, the Chief Justice of the Federation, the Archbishop of West Africa, the Chief Justice of the High Court of Lagos and the Bishop of Lagos.

At 10.05 the Queen and The Duke of Edinburgh, accompanied by Members of Her Majesty's Household, left Government House and drove *via* Marina and Force Road, with escorts of the Nigeria Police, to the House of Representatives.

On their arrival the Royal Standard was broken at the masthead, and the Governor-General escorted the Queen and the Duke into the Entrance Hall.

The procession moved into the Lobby which gives access to the Chamber as follows:

The Queen	The Duke of Edinburgh
The Governor-General	
The Lady-in-Waiting	The Private Secretary to the Queen
The Assistant Private Secretary to the Queen	The Private Secretary to the Duke of Edinburgh
The Equerry-in-Waiting	

The Chief Justice of the Federation, the Archbishop of West Africa, the Chief Justice of the High Court of Lagos and the Bishop

of Lagos joined the Procession and the Military Aide-de-Camp brought up the rear.

The Equerry who had preceded Her Majesty moved to the entrance door of the Chamber and there signalised Her Majesty's arrival by knocking thrice upon the door.

The doors were opened and, preceded by the Serjeant-at-Arms, the Procession moved through the Noes Lobby to the Bar of the House.

At the Bar of the House the Serjeant-at-Arms moved aside and bowed and the Queen was received by the Speaker, who then preceded the Queen and the Duke of Edinburgh up the Floor of the House.

The Clerks were standing at the end of the Table further from the Throne and facing towards the Bar of the House. Upon Her Majesty's coming level with them they bowed and turned to face the Throne.

The Speaker, passing down the left side of the Table, went to the chair usually occupied by the Clerk of the House, but facing the Throne. The Queen proceeded along the right side of the Table to the Throne followed by His Royal Highness whose Chair was to Her Majesty's left.

The Governor-General, the Private Secretary to the Queen and the Lady-in-Waiting, followed by the Chief Justice of the Federation and the Archbishop, occupied seats to the right of the Throne; and the Private Secretary to the Duke and the Assistant Private Secretary to the Queen were on the left hand of the Duke of Edinburgh, with the Equerry-in-Waiting.

When all had thus come to their places, Her Majesty, taking Her seat upon the Throne, said: "Pray be seated."

The Speaker then read the Loyal Address from the House of Representatives and, having read it, he ascended the steps to the upper dais and presented the Address on his knees to Her Majesty, and withdrew to his seat.

Her Majesty having been graciously pleased to give leave, the Speaker called in turn upon the Minister of Transport (The Hon. Abubakar Tafawa Balewa, C.B.E.), the Minister of Communications and Aviation (The Hon. K. O. Mbadiwe) and the Leader of the Opposition (The Hon. Chief S. L. Akintola) to speak in support of the Address.

The Private Secretary to the Queen then handed to Her Majesty the text of the Gracious Reply, which Her Majesty read as follows:

MR. SPEAKER AND HONOURABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES:

I thank you for the kind words of welcome and the sentiments of loyalty to which you have given such eloquent expression.

It gives great satisfaction to me and my husband that we should be able, at this most important stage of Nigeria's development, to visit this great country as it moves confidently forward to what I am sure will be a happy and

fortunate future and a place of increasing significance in the modern world.

You in this Legislature represent a vast and populous Federation. We look forward to seeing something of your country in all its rich and interesting variety and to meeting as many as we can of its diversity of peoples. But we know—and we regret—that difficulties of time and distance will prevent our having more than a glimpse of all that lies between the Gulf of Guinea and the Sahara and of greeting more than a fraction of my thirty million people in Nigeria.

It is a particular cause of disappointment to me that I shall not be able on this occasion to visit the Trust Territory of the Cameroons under United Kingdom Administration. I am happy to know that special arrangements have been made for me to meet representatives of the peoples of the Territory. I hope to hear from them more about the progress which has been made under the guidance of the United Nations and in close association with Nigeria, and to send through them my greetings and good wishes to the Territory as a whole.

The history of Nigeria as a united country is short; yet there is already much in it to praise. I have followed with interest the accounts of your social, political and economic progress. I rejoice that the efforts of those who have come to Nigeria from Britain and other Commonwealth countries have borne such good fruit and to hear today your grateful reference to your overseas public servants. I would add my own tribute to them and to the others—missionaries, doctors, traders and teachers—who by their skill, knowledge and devotion have done so much to develop this country and assist its peoples. But their work would have prospered little if there had been no answering effort from Nigerians themselves, and I congratulate you that this response has been so quick and so full.

I wish on this historic occasion to make particular mention of those of all races who, in this Legislature and in those which have preceded it, have brought this great country so far along the road of its high destiny.

My husband and I have been deeply touched by the welcome you have given us. We, in return, bring to you the affection and the support of my other people in the United Kingdom whose eyes are turned on Nigeria today.

May God bless you all.

At the end of Her Majesty's Address, all present rose and the Procession left the Chamber in the same order as before.

At the Bar of the House the Speaker stood aside and bowed as Her Majesty passed in procession.

Upon leaving, the Procession halted in the Entrance Hall and the Governor-General escorted the Queen and the Duke to the Royal car.

The Royal Party then returned to Government House by Race-course Road, King's College Road, Cable Street and the Marina.

2. PRESENTATION OF A LOYAL ADDRESS TO HER MAJESTY THE QUEEN BY THE NORTHERN REGIONAL LEGISLATURE

By Isa S. Wali,

Clerk-Assistant to the Northern Regional Legislature of Nigeria

It is most fitting that Lugard Hall—the Northern Nigerian Parliamentary Buildings, named after the memory of that great colonial administrator and the first Governor-General of Nigeria, the late Lord Lugard—should be the scene of a great historic event with which Nigeria was honoured early this year. The day was Friday, 3rd February, 1956—a particularly brilliant and clear afternoon—when Her Majesty and His Royal Highness the Duke of Edinburgh, on the third day of their visit to Northern Nigeria, visited Lugard Hall where a special ceremony was awaiting them.

The advance party, which consisted of Lady Sharwood-Smith, dressed in neat satin evening dress, and some members of the Royal Household, was the first to arrive at Lugard Hall. They were then followed by His Excellency the Governor, Sir Bryan Sharwood-Smith, dressed in blue uniform, accompanied by his A.D.C., at about 5 p.m.

Inside the Chamber were assembled all the Members of both Houses (House of Chiefs and the House of Assembly) which form the Northern Regional Legislature. It was a most colourful sight, with the Members and Chiefs dressed in their gaily and richly adorned robes, most of them wearing turbans of every pastel shade dazzling in the light of the brilliant colours of the great velvet capes and robes. These contrasted sharply with the British Members, five of whom were wearing white tropical uniforms and the sixth wearing black professional uniform and a full-bottomed wig.

Outside, on the lawns in front of the building, facing the three-mile long avenue of great mahogany trees and along the inner drive to the Hall, were seated the four hundred invited guests, which included leading Native Authority Councillors, Chiefs other than Members of the House of Chiefs, Senior District Heads, Civil Servants and their wives, representatives of commercial firms and voluntary organisations, distinguished business men and retired senior Government officials. These had to be accommodated outside as there was no room inside the Chamber for guests. The normal public gallery was transformed. Part was occupied by the cinema cameras, part by the sound-proof room for the B.B.C., and by the Press. The normal Press gallery was reserved for the Royal Household and the Federal Ministers from the North. Though, however, the public had thus no view of what was going on inside the Chamber, they could hear everything about it from the commentaries that were broadcast by the B.B.C. and the Nigerian Broadcasting Service—which were supposed to reach even the United Kingdom.

By 5 p.m. His Excellency the Governor was awaiting the arrival of the Royal Visitors, who had left the Government House for Lugard Hall in a Royal procession of five cars. As the open Rolls-Royce approached the entrance to Lugard Hall at 5.19 p.m., the first verse of the National Anthem was played by the Band of the Nigeria Regiment. The great moment, which everybody was impatiently awaiting, had come: the Queen and the Duke, looking dignified and graceful under the brilliant cool and lovely sunshine, then alighted from the Royal car. The Guard of Honour, provided by the 4th Battalion of the Queen's Own Nigeria Regiment (a special honour, the name, bestowed on the Nigerian Regiment by Her Majesty during the Royal Visit to Nigeria), gave a Royal Salute.

The President of the House of Assembly (Mr. C. R. Niven, C.M.G., M.C.), dressed in his official robes of jewel-green velvet, gold braid and white lace, specially designed to suit his African successors, was then presented to Her Majesty and the Duke, below the porch of the main entrance, by the Governor, who himself is the President of the House of Chiefs.

Her Majesty and His Royal Highness were then led into the Chamber of the House by His Excellency the Governor and the President of the House of Assembly, followed by the Lady-in-Waiting, the Countess of Euston, Lady Sharwood-Smith, Major Ironsi, the Queen's Nigerian Equerry, Sir Michael Adeane, the Queen's Private Secretary, the Master of the Household and the A.D.C. to the Governor. The glittering procession slowly moved along the richly carpeted verandahs, decked with flowers, into the Chamber. At the door of the Chamber, as the Royal Visitors were being ushered in, the Clerk to the Legislature announced "HER MAJESTY THE QUEEN", and all Members stood up, in front of their shining green-leathered seats. His Excellency and the President of the House of Assembly then led Her Majesty to her seat on the Royal dais. Her Majesty, walking to the left, took her seat on the Throne, followed by His Royal Highness who, walking to the right, took his seat on the left of Her Majesty. His Excellency, the President of the House of Assembly and Sir Michael Adeane were seated on the right of Her Majesty, while Lady Euston and Lady Sharwood-Smith took their seats on the left of His Royal Highness. The A.D.C. to His Excellency was standing behind Her Majesty's Private Secretary. In the midst of that great excitement, the dignified atmosphere of calmness was broken when Her Majesty was graciously pleased to order the Members "Pray be seated". All members then took their seats.

The Premier, Alhaji Ahmadu, C.B.E., the Sardauna of Sokoto, dressed in white gown decorated with heavy silver and wearing a white Arab head dress secured by gold ropes, rose in his place at the end of the Government Bench and in profound silence read the Loyal Address, on behalf of "the people of the Northern Region of

Nigeria", into the microphone fixed in front of his seat. The Address was as follows:

May it please Your Majesty:

We, the people of the Northern Region of Nigeria, desire to greet Your Majesty with the expression of our unfailing allegiance to the Throne on this Your first visit with His Royal Highness to our Region of Northern Nigeria.

Consistent with the bi-lingual nature of the proceedings of the Legislature, and for the benefit of those Emirs and Chiefs who could not understand English, the Sardauna then read the translation of the Address, and of the speech with which he delivered it, in Hausa. As he ended, he slowly climbed the steps to the Royal dais and presented the Address to the Queen, bowing deeply. Sir Michael Adeane advanced with the Queen's reply and took the Premier's speech, bound in rich green leather, from Her white-gloved hands.

The Queen then spoke, with her usual dignity and kindliness, seated before the microphone which stood on a little stand before Her. Her voice rang clearly and sweetly into the farthest corners of the Chamber. She said:

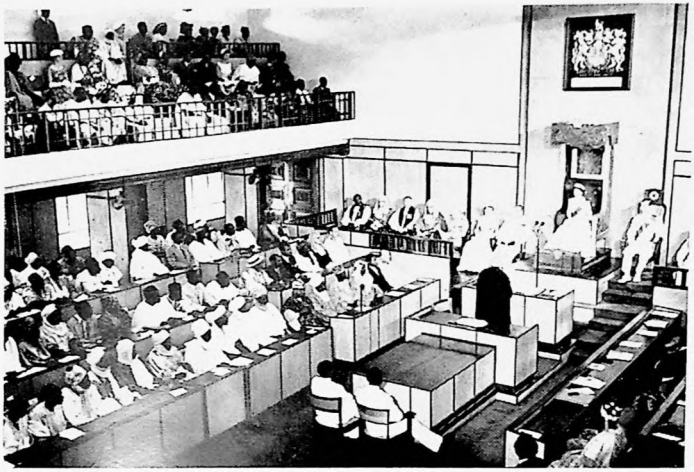
MR. PREMIER:

It is with great pleasure that I have come here today to receive your address and to speak to you myself. I have been deeply moved by your expressions of loyalty. The welcome that my husband and I have received in the Northern Region has shown me that these feelings of loyalty and affection are shared by all sections of the population. Many of those who have come to greet us have had to travel long distances, some on horseback and some on foot. We wish them all to know how glad we are to see them and to thank them for the welcome they have given us. We wish also to send greetings to those in the Provinces who have not been able to come here and whom we shall not see elsewhere in this Region.

After little over fifty years of British administration your country is now approaching self-government. A transformation has taken place in these years and it has been achieved without undue strain and hardships. It is fitting that, in this Hall which bears his name, we should remember Lord Lugard and all those who have contributed to this truly remarkable record of progress: the public servants, who have impartially administered justice and, in close association with the Chiefs of the Region, laid the foundations of good government: and the missionaries, teachers and technicians who have brought the benefits of education and commercial prosperity to the Region. I wish also to pay my tribute to the part played by the people of this Region and of the whole of Nigeria in two World Wars. We shall not forget the large contingents of fighting men sent from the Northern Region, particularly to the campaigns in Abyssinia and Burma.

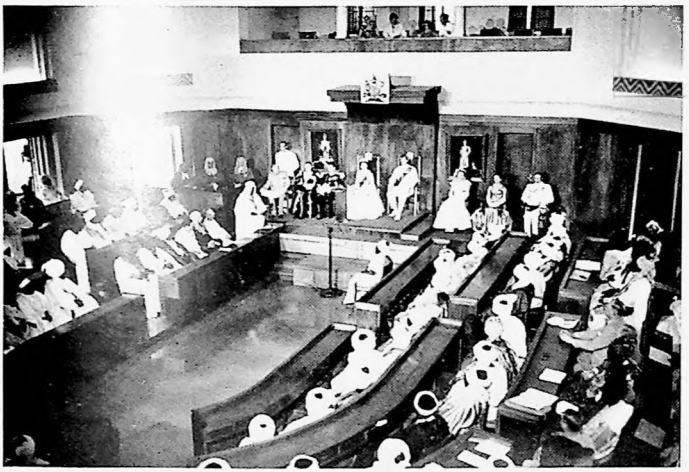
Much still remains to be done. The struggle against ignorance, disease and poverty will require for years your industry and your application. I have learnt with great pleasure of the manner in which Ministers, Native Authorities and all concerned are tackling these problems. I am struck by the evident determination of the people of the Northern Region to educate their children. Without this the economic development so necessary for the progress of the country cannot be achieved. The education of women is very important. I am pleased to hear of the steps you have already taken and the future plans you have made for this.

The people of the Northern Region vary in character, in background and in



NIGERIA—HOUSE OF REPRESENTATIVES

The Speaker of the House of Representatives, Sir Frederic Metcalfe, K.C.B., reading Loyal Address to the Queen on 31st January, 1956. (Photograph by courtesy of Messrs. P.A.-Reuter Photographs Ltd.)



NIGERIA—NORTHERN REGIONAL LEGISLATURE

The Prime Minister of Northern Nigeria, Alhaji Ahmadu, reads a Loyal Address to the Queen in the Northern House of Assembly at Kaduna on 3rd February, 1956. (Photograph by courtesy of Associated Press Ltd.)

religion. Whatever the differences in religious beliefs, I would ask you to remember that those beliefs form the background of national standards of integrity and morality. I am sure that the Government of the Northern Region will always allow men freedom to worship God in the way that the conscience of each dictates. Tolerance is necessary not only in religious matters but also towards those whose views and traditions differ. It is by this spirit of understanding that the people of varied races and tribes will be brought together.

I assure you all of my deep interest in your welfare and in your progress, which I shall continue to watch closely. May the blessing of God rest on this country and its people.

At the end of Her Majesty's Reply, the Clerk to the Legislature, standing on the lower floor at the foot of the Royal dais, read the Hausa translation of the Reply. The Queen then handed her paper to Sir Michael. The President and the Governor rose and passed before the Thrones bowing as they went. The Queen then followed with the Duke, and the procession unfolded itself into the former order, along the verandah and up the stairs to the first floor on to the balcony under the domed porch that projects from the front of Lugard Hall. Here the Royal couple acknowledged the cheers and applause of the crowded lawns beneath them, with smiles and waves.

When they came back inside they signed the new Visitors' Book, which had been specially ordered from London for the Legislature, and now had the honour of having "Elizabeth R" and "Philip" as the first signatories in it. They stood there for some time conversing with the Presidents, while the Clerk-Assistant ushered the twenty-four members to be presented, twelve from each House (and two from each Province), downstairs into the Library to await the coming down of the Royal party. The Royal party then came down the stairs and took station on the green carpet at the foot of the steps into the Chamber. The members of the Household grouped themselves on the steps behind the Queen. The twelve senior Chiefs (who had not been previously presented to Her Majesty) and twelve elected Members filed past from the western to the eastern sides of the entrance Hall, and were presented by the Governor to the Royal couple.

After the presentations, the party moved slowly to the entrance and, after thanking the Presidents, took leave and entered their Rolls under the scarlet sunset sky and drove slowly away in the same impressive procession they came in. And so Lugard Hall's great day passed into memory.

It was indeed a great day in the history of the Northern Nigerian Legislature and a great honour on the Region. So conscious indeed were the Members of that honour that, at the first opportunity during the March Budget Sessions of both Houses, they, "on behalf of ourselves and the entire people of the Northern Region of Nigeria and the Northern Cameroons", unanimously passed the following motion:

That a humble address be presented to His Excellency the Governor praying him to convey to Her Majesty the following message:

We, Your Majesty's loyal and most devoted subjects, Members of this House, on behalf of ourselves and the entire people of the Northern Region of Nigeria and the Northern Cameroons under Your Majesty's trusteeship, humbly beg to offer our profound gratitude and dutiful thanks for the visit which it had pleased Your Majesty and His Royal Highness to make to this Region, for the gracious reply which Your Majesty was pleased to make to the Loyal Address presented by the Premier of the Region on the occasion of Your Majesty's visit to our Legislature, and to assure Your Majesty of our continued loyalty and affection to Your Person and the Throne which words alone cannot express,

and also that a suitable plaque should be placed in the vestibule of Lugard Hall to commemorate the occasion of the visit of Her Majesty Queen Elizabeth II and His Royal Highness the Duke of Edinburgh to this Hall on 3rd February, 1956.

The plaque, commemorating the Royal Visit, has already been designed and approved by the House Committees; it will bear commemorative inscriptions in English and Arabic, with the Hausa translation in Roman characters. It is proposed that the work will be undertaken by a firm in England. In the meantime, by order of the Executive Council, the original copy of Her Majesty's Reply to the Loyal Address, together with the Address itself, was mounted in a double-sided glass frame and hinged to a conspicuous wall in the library of the House.

This, nevertheless, was not sufficient to a loyal people wishing to commemorate the unprecedented visit of their Sovereign to their land and their Legislature. Whereas the plaques and the frames could only be seen as people moved in or out of the Chamber, the Members would require something more symbolic and of everyday use to remind them constantly and continuously of that great visit. They, therefore, decided that their newly made silver mace could have no more honoured tradition to symbolise than that great historic occasion, and so got the mace specially engraved in England on both the head and one of the shields that make up its base, with the following inscriptions: "Northern Region of Nigeria," "3rd February, 1956," "To Commemorate the Visit of Her Majesty Queen Elizabeth II to the Legislature."

The 3rd February will thus go down in the annals of our country, and the memory of that historic Visit so vividly commemorated, will be handed down from generation to generation for centuries to come.

3. ROYAL VISIT TO THE EASTERN HOUSE OF ASSEMBLY, ENUGU, NIGERIA

By A. E. Eronini, M.B.E.,
Clerk of the Eastern House of Assembly

The Royal Visit to the Eastern Region of Nigeria (6th-9th February) included an hour's visit by Her Majesty and His Royal Highness the Duke of Edinburgh to the Legislative Council Chamber from 9 to 10 a.m. on 7th February.

Although the occasion was not a meeting of the House it was, by using the Council Chamber, the venue of the "State" Welcome of the Region to Her Majesty.

At thirteen minutes past nine o'clock tumultuous cheering from the crowds thronging the streets proclaimed the approach of Her Majesty. On reaching the main entrance to the House of Assembly the Royal Procession halted. Her Majesty and His Royal Highness alighted and were received by His Excellency the Governor, Sir Clement Pleass, K.C.M.G., K.C.V.O., K.B.E. The Royal Standard was broken above Parliament House. The mammoth crowd on the lawn of the House remained standing. His Excellency conducted the Queen and the Duke to the Entrance Vestibule of the House and there presented to Her Majesty the Speaker of the House (Mr. E. N. Egbuna) and the Clerk (Mr. A. E. Eronini, M.B.E.). Preceded by the Speaker and the Clerk, Her Majesty and His Royal Highness proceeded to the Chamber of the House, followed by His Excellency the Governor, Lady Pleass, and members of the staffs of Her Majesty and the Governor. The procession moved up the carpeted main staircase and entered the Chamber through the "Ayes" lobby (where the Serjeant-at-Arms heralded Her Majesty's approach), moving up the central aisle to the dais. On reaching the steps of the dais the Speaker took one pace to his right and the Clerk one to his left and both turning inwards bowed as the Queen ascended the dais. The members of the Royal Procession arranged themselves on either side of the dais, the Speaker and the Clerk taking up positions left and right of Her Majesty respectively.

Her Majesty sat on a red Throne with gilded Crown under a canopy made of local mahogany; His Royal Highness was seated at Her Majesty's left. When Her Majesty and His Royal Highness entered the Chamber and, from the dais, faced the assembly, the scene, emphasised by the dignified and brilliantly lighted panelled surroundings, was breath-taking in its beauty.

"Pray be seated," said Her Majesty. His Royal Highness, members of the Royal Household and all present took their seats accordingly.

The Premier (Dr. the Honourable Nnamdi Azikiwe) rose from his

place and, moving to a position immediately in front of Her Majesty, bowed and read the Loyal Address as follows:

TO THE QUEEN'S MOST EXCELLENT MAJESTY:

The Most Humble Address of the Premier, Ministers of State, Members of the House of Assembly and the People of the Eastern Region of Nigeria.

May it please Your Majesty:

In the name of the Government of the Eastern Region, and on behalf of more than seven and a half million British subjects and protected persons, I welcome Your Majesty to this part of tropical Africa with its pleasant sunshine and exotic scenery. Our British connection goes back to the halcyon days of the nineteenth century when our venerated forefathers concluded treaties of amity, peace and commerce with Your Majesty's illustrious forebear, Queen Victoria. By virtue of these ties of friendship, we welcomed British protection and have enjoyed a prolonged period of peaceful existence and mutual development.

Thirty years ago, Your Majesty's Royal Uncle, who was then Prince of Wales, paid a historic visit to this country. He impressed our people with the sincerity of British aims and objectives in West Africa. Since then, we have made such rapid progress spiritually and materially that we are now actively engaged in adapting our political institutions to the building of a modern State which is based on British traditions of parliamentary government and representative democracy.

I can assure Your Majesty that the people of the Eastern Region appreciate Your presence in our country today, because it is a noble gesture which is destined to draw the communities of Nigeria and the United Kingdom closer in comradeship under the British flag. We pledge our loyalty to Your Majesty's sovereign person and to the great ideal of human brotherhood and freedom so cherished by British subjects and protected persons all over the world, and which distinguishes in broad relief the British Commonwealth of Nations from others.

Of these we are certain: our loyalty is transparent and unalloyed; our love of freedom and justice is innate and not superficial. Our record in two world wars, when we fought side by side with our British comrades, is proof which is positive and conclusive.

That is the spirit with which we welcome Your Majesty and His Royal Highness the Duke of Edinburgh to Eastern Nigeria. We wish You a pleasant stay among us in this tropical paradise. We hope that our sunny climate will be kind to You. We pray that God Almighty, the giver of life and all the good things of the earth, will bless You and grant You wisdom.

Above all, Your Majesty will have observed that we are seriously engaged in the task of marching forward towards greater political responsibility. We trust that Your Majesty will not forget this part of the world where, in spite of honest differences of opinion, without rancour, without violence, British rule and ideals have transformed diverse communities from the paths of strife and backwardness to the highroads of peace and progress. Indeed, the races and communities of Nigeria have demonstrated good sense and have proudly embarked on a great crusade to make this country a laboratory of human relations, as part and parcel of this great multi-racial Commonwealth.

The Premier moved forward, bowed and handed the Address to Her Majesty, and stepping backward, bowed and resumed his seat.

The Private Secretary to Her Majesty, moving in front of the dais, bowed, and received the Address from Her Majesty; he then handed to Her Majesty the Reply. He again bowed, and stepping backward resumed his place. Her Majesty read the Reply as follows:

I thank you, Mr. Premier, for the loyal Address which you have presented on behalf of My people of the Eastern Region of Nigeria. I have been deeply moved by the sincerity and conviction with which you have expressed their loyal sentiments, and My husband and I will long remember the spontaneous demonstrations of affection with which we have been received.

I heard with great pleasure your reference to Queen Victoria, in whose reign was forged the link between the people of Nigeria and the Throne. I pray that under God this happy association will long continue, and that the bonds of friendship and goodwill which join Nigeria and Britain will retain their strength undiminished. The history of the last half-century has clearly shown how impressive is the progress which can be achieved by willing co-operation between My people in Nigeria and their friends in Britain, and it is My confident hope that together they will go forward to a still more happy future.

My husband and I are greatly pleased to have this opportunity of meeting, for the first time in their homeland, so many of the people of Eastern Nigeria. We have long looked forward to this visit, for it is only by meeting people in their own home that it is possible to know them and to understand their difficulties and aspirations. Our one regret is that we cannot stay longer and that it is possible for Us to visit only Enugu, Calabar and Port Harcourt. It would have afforded Us keen satisfaction to have been able to include your other towns in Our tour and, in the villages and countryside, to have seen something of the day-to-day life of My people in this Region.

My husband joins with Me in wishing you all happiness and prosperity in the years to come.

At the conclusion of the Reply, the Private Secretary again moved in front of Her Majesty, bowed and received the Reply which he later handed to the Speaker. The Speaker and the Clerk of the House then advanced, bowed and took up positions facing Her Majesty, ready to lead the way from the Chamber. Her Majesty rose. Immediately all present stood, and the Speaker and the Clerk again bowed to the Queen, took two steps to the rear and turned. The procession then left the Council Chamber through the "Ayes" lobby.

At the top of the main staircase the procession turned to the left and ascended the stairs to the Clerk's suite. After a brief respite there, during which Her Majesty and His Royal Highness signed the Distinguished Visitors' Book and inspected the Roll of Honour of the people of the Eastern Region who gave their lives in the 1939-45 war, the Queen and the Duke, with the Governor and Lady Pleass in attendance, appeared on the balcony above the porch of the House of Assembly. A fanfare of trumpets announced Her Majesty's appearance.

Her Majesty stood on the balcony for several minutes, acknowledging the cheers of the crowds assembled on the lawn of the House and around the precincts of the House (who had meantime been joined by those who took part in the proceedings in the Council Chamber).

On retiring from the balcony the Queen and the Duke, preceded by the Speaker and the Clerk, and followed by the Standard-bearer, descended the main staircase to a dais in front of the porch of the

House of Assembly for an Investiture ceremony, which was witnessed by the thousands of people who were gathered in front of the House. On completion of the Investiture the Queen and the Duke retired from the dais to the Entrance Vestibule where they took leave of the Speaker and the Clerk of the House.

They then entered their car, and as they left the House at 10 a.m. the Royal Standard was lowered. The same evening, Sir Michael Adeane, Her Majesty's Private Secretary, addressed the following letter to the Speaker:

Government House, Enugu.
7th February, 1956.

Dear Mr. Speaker,—

I am commanded by The Queen to convey to you and to the members of the House of Assembly of the Eastern Region Her Majesty's great appreciation of the manner in which this morning's ceremony was carried out within the House.

The Queen hopes that you will express her congratulations to the Clerk of the House and to the members of your staff on their part in this dignified and historic occasion.

Yours sincerely,
M. E. ADEANE.

Thus came to a conclusion the most momentous and colourful event in the history of the Eastern House of Assembly. The picture of Her Majesty seated on the Throne in the Council Chamber was a historic scene and a profoundly moving occasion which will live for ever in the minds of those privileged to witness it. The proceedings in the Chamber were by special arrangements televised to crowds sitting in the forecourt of Government Office buildings adjacent to the House of Assembly.

III. VACANCY IN THE OFFICE OF PRESIDING OFFICER

ANSWERS TO QUESTIONNAIRES

A general article on the election to the office of Speaker, to cover also those Upper Houses overseas where the occupant of the Chair is called the President, appeared in an early issue of THE TABLE,[1] followed by other information in respect of the office of Speaker, in the various countries of the Commonwealth and Empire.[2]

Hitherto, however, no assembled information has been given in connection with the procedure in regard to resignation from such office, although it has been, from time to time, the subject of items in several of the *Questionnaires*[3] to members.

It is now proposed to set out the particulars received.

United Kingdom

At Westminster in the event of a vacancy in the office of Speaker of the House of Commons during a Session, if the vacancy is caused by the Speaker's resignation from office, protracted illness, or death, the Clerk, as the case may be, announces the death of the Speaker, or, at the ensuing meeting of the House, reads a letter which the Speaker, stating the cause of his retirement, has addressed to the Clerk. Immediately after the announcement has been made, the Mace is brought into the House by the Serjeant-at-Arms, and is laid under the Table. A member then rises, and, addressing the Clerk, moves the adjournment of the House, and the Clerk puts the question "by direction of the House". The Speaker, on other occasions, informs the House of the cause that compels his retirement from the Chair.[4]

For the election and approval of the new Speaker the same forms are observed as at the beginning of a Parliament; except that instead of Her Majesty's desire being signified by the Lord Chancellor in the House of Lords, a Minister of the Crown in the Commons acquaints the House that Her Majesty "gives leave to the House to proceed forthwith to the choice of a new Speaker"; and when the Speaker has been chosen, the same Minister acquaints the House that it is Her Majesty's pleasure that the House should present their Speaker tomorrow (at an hour stated) in the House of Peers for Her Majesty's royal approbation. Mr. Speaker-elect puts the question for adjournment, and when the House adjourns, he leaves the House without the Mace before him.

On the following day, Mr. Speaker-elect takes the Chair after Prayers have been read and awaits the arrival of Black Rod from the Royal Commissioners, by whom the royal approbation is given under a commission for that purpose, with the same forms as at the meeting of a new Parliament, except that the claim of privileges is omitted.

On retiring from the House of Lords the new Speaker reports his approbation by the Queen and repeats his acknowledgments to the House, after which the appointed business for the day is entered upon.[5]

Channel Islands

Jersey

The President of the States is the Bailiff, who is appointed by the Crown; he is also President of the Royal Court. On the office of Bailiff becoming vacant, the States appoint a "Judge Delegate" who exercises all the functions of that office pending a new appointment.

Canada

House of Commons.—There are precedents in the United King-

dom Parliament for the procedure to be followed when a Speaker dies, resigns vocally from the Chair, or is dismissed (as happened to Sir John Trevor in 1695); but there are none with regard to a Speaker resigning during the Recess of Parliament and keeping his seat as a private member. This peculiar situation occurred in Canada a few days before the Session opened in January, 1935. The question arose to whom the written document tendering the resignation should be delivered. There is no doubt that in England it would have been addressed to the Clerk of the House. But in Canada conditions are different, in that the Clerk does not control his own Department and is not independent of the Speaker's authority. Under the Civil Service Act, the Speaker is the head of the House of Commons Department and the Clerk is his deputy as such—quite different from the Deputy-Speaker, who is his substitute in the Chair. House of Commons S.O. 83 provides that the Clerk is responsible for the safekeeping of all the papers and records of the House and has the direction and control over all the officers and clerks employed in the offices, subject to such orders as he may from time to time receive from Mr. Speaker or the House. One might therefore ask whether it would be proper that the Speaker's resignation should be forwarded to an officer who is in fact his Permanent Secretary. As there was some hesitation, it was thought that the proper authority to whom the resignation should be directed was the House itself and that it did not matter to whom it was addressed, the main requisite being that it should be officially communicated to the House. The Prime Minister is Leader of the House, and, under Canadian practice, he makes the Motion for the Speaker's election at the opening of a new Parliament; Canada does not follow in this regard the same practice as the United Kingdom. Mr. Black therefore addressed the following letter to Mr. Bennett, the Prime Minister:

House of Commons,
The Speaker,
Ottawa,
January 15, 1935.

SIR,

I find it necessary to ask the House of Commons to allow me to retire from the Chair. In laying down the great office to which the House of Commons has called me, I trust I can hand down its traditions unimpaired. If I have been able to discharge my official duties with any degree of success, it is because I have received the help and support of all my colleagues, for which I desire to express my sincere thanks.

Yours sincerely,
(Signed) GEORGE BLACK.

When the House met, the Clerk was not in the Chair at the Table as Presiding Officer because he can only preside after the House has been commanded by the Governor-General to choose a Speaker. Mr. Bennett could not then address the Chair. He therefore said:

It is my unpleasant duty to announce to this House that the Honourable George Black, our Speaker, has resigned by writing dated the 15th January, 1935, as follows:

He then read the above letter, adding:

I, of course, am not permitted by the rules of the House to address my remarks to any official (the Clerk), for as Members of the House we all stand on an equality. It will therefore be necessary for us to proceed with the election of a Speaker, which we shall do in due course after the formalities which have obtained through the centuries have been complied with.

Mr. Bennett then sent the resignation to the Clerk who recorded it in his scroll. From that moment, and not before, Mr. Black ceased to be Speaker of the House of Commons.

The Journals recorded the proceedings as follows:

Mr. Bennett announced the resignation of Honourable George Black as Speaker of the House of Commons as follows:

(*Letter of resignation is here inserted.*)

When Mr. Bennett spoke, he addressed the members and not the House, which had not then been completely constituted by the election of a Speaker. He actually performed a duty which devolved on the Clerk, but he was justified in doing so since the Speaker's resignation had been addressed to him. By sending the Speaker's letter to the Clerk at the Table, he caused it to be entered in the Journals of the House. On the next day, a new Speaker (Mr. J. L. Bowman) was elected.

It seems, therefore, that the delivery of the writing to the Premier was not indispensably necessary. The essential element is that the resignation be communicated to the House, which can only be done by placing it on the Table and recording it in the Clerk's scroll. Yet it must be recognised to-day that the Leader of the House is not quite on equality with the other members. He is the official spokesman for administrative affairs submitted to the House. The Speaker is responsible for parliamentary privileges and for procedure, but upon the Prime Minister devolves the important duty of accepting or disapproving all Motions introduced and all questions put by the Speaker. Although in theory he is not more than a private member, yet his power is great as long as he enjoys the confidence of the majority. He cannot give orders to the House, but he is its first adviser, and when it meets he is in duty bound to submit for its consideration matters of prime importance such as the receipt of a letter conveying the Speaker's resignation.

[The offer of resignation made, and subsequently withdrawn, in July, 1956, by Mr. Speaker Beaudoin took place too late for full treatment in this article; a note upon the incident, and the events leading up to it, will appear in Volume XXV.]

Australia

The Constitution provides that the President of the Senate[6] or the Speaker of the House of Representatives[7] may be removed from office by a vote of the Senate or House of Representatives as the case may be, or he may resign his office or his seat by writing addressed to the Governor-General.

House of Representatives.—The provisions of the Standing Orders of the House of Representatives dealing with this matter are as follows:

Standing Order No. 19.—When a vacancy has occurred in the Office of Speaker during a Session, the Clerk shall report the same to the House at its next sitting, and the House shall either forthwith, or at its next sitting, proceed to the election of a new Speaker in the manner hereinbefore provided.

Sanding Order No. 20.—When a vacancy has occurred in the Office of Speaker during Recess, the Clerk shall, on the opening of the next Session, report the same to the House on its return from hearing the Governor-General's Speech, or from attending to hear the Commission read, as the case may be, and the House shall forthwith proceed to the election of a new Speaker in the manner hereinbefore provided.

The records of the House contain one instance only of the death, and one only of the resignation, of a Speaker.

In the former case the Clerk, at the next sitting of the House, announced the death of the Speaker and a motion of condolence was carried and the House then adjourned as a mark of respect until the next day. Questions on the motions were put by the Clerk by the direction of the House.[8] When the House met on the following day it proceeded immediately to the election of a new Speaker. Following the election the Prime Minister announced that the Governor-General would fix a time for receiving the Speaker.[9]

In the case of the resignation, the Speaker, acting in accordance with the provisions of the Constitution,[10] tendered his resignation to the Governor-General, who thereupon forwarded a message to the House of Representatives in the following terms:

I desire to acquaint the House of Representatives of the Commonwealth that I have received a letter dated..... from ..... tendering his resignation as Speaker of the House of Representatives, which resignation I have accepted.

Accordingly I invite the House, at its next sitting, to proceed to elect a new Speaker.

At the commencement of the next sitting this message was read by the Clerk and the House proceeded at once to the election of a new Speaker. Following the election the sitting was immediately suspended to enable the new Speaker to present himself to the Governor-General.[11]

New South Wales

The method of electing Members of the *Legislative Council* after its

reconstitution, in 1934, and the election of its first President, can be followed by reference to Division 2, Secs. 17a to 17f and Sec. 21, sub-sec. (1), of the New South Wales "Constitution Act" No. 32 of 1902 (as amended), and Constitution (Legislative Council Elections) Act, 1932, Part III, Secs 41 and 42.

As an illustration of the application of the Act, the Honourable Sir John Peden was elected to the reconstituted Legislative Council for a term of twelve years and chosen by the House to be its President. At the termination of his twelve years' term, Sir John did not seek re-election to the Council, and the Honourable E. H. Farrar, who had just completed a twelve years' term and been re-elected for a further twelve years, was elected President. The decease of Mr. Farrar, in 1952, before the expiration of his term as a Member, created a vacancy in the Office of President. The Honourable W. E. Dickson was elected his successor.

Mr. Dickson's term as a Member expires in 1964; he will then cease to be a Member and consequently the Presidency will become vacant. In the event of his again standing for election and being re-elected, he could be proposed as President and be re-elected to that Office; on the other hand, another Member with only a few years of his term as a Member remaining, could be nominated and receive the majority of votes of the House.

In the event of the resignation of a President—*i.e.*, his resignation as a Member—the same procedure would apply as in the case of the death of a President before the expiration of his term of service as a Member.

The President can also be removed from Office by a vote of the House.

In the *Legislative Assembly* it is usual, but not the invariable practice, for the Speaker to announce his intended resignation to the House, and later to communicate it in writing to the Clerk, who makes the announcement at the next sitting.

The House proceeds to the election of a new Speaker (the same forms being observed as at the commencement of a Parliament), but the Speaker-elected does not lay claim to privileges when presenting himself to the Governor.[12]

Victoria

In the *Legislative Council* no detailed procedure is prescribed by the Constitution Act or the Standing Orders for the resignation of the President, but S. VI of the Constitution Act provides that whenever the place of the President shall become vacant "by death, resignation or otherwise, the Council shall forthwith proceed to elect some other person to be President".

The Constitution Act therefore contemplates the resignation of a President, and it is thought that it would be sufficient for a President

desiring to resign to do so by a communication addressed to members generally and delivered either personally or (say) through the Clerk who would read it to the House; but on 28th August, 1923, the President of the Council (while retaining his seat as a member of the Council) resigned his office of President by a letter addressed to the Leader of the Government in the Council, who thereupon announced the resignation to the Council. At the next meeting of the Council a new President was chosen.

On 6th July, 1910, the President of the Council resigned his seat as a Member of the Council by letter to the Governor as prescribed by the Constitution Act, without making any reference in such letter to his office of President. The office of President was, of course, thereupon regarded as vacant and a new President was forthwith elected by the Council.

In the *Legislative Assembly* no detailed procedure is prescribed by the Constitution Act or the Standing Orders for the resignation of the Speaker; but on 29th September, 1887,[13] the House met pursuant to adjournment, and Mr. Gillies (Premier), addressing himself to the Clerk, acquainted the House that he had that day received a letter from Mr. Speaker which he read to the House. Mr. Lalor's resignation of the office of Speaker was then read, and Mr. Gillies, addressing himself to the Clerk, moved that the House do now adjourn. The Clerk put the question for the adjournment of the House, which being agreed to, the House adjourned until the next sitting day, which was the following Tuesday, when the House proceeded to the election of a Speaker in the usual manner.

The procedure followed when Mr. Blackburn resigned as Speaker on 1st August, 1934, was as follows:

The Speaker from his Chair announced his intention of resigning and informed the House of his reasons. He concluded his announcement with the following words: "For the purpose of the records I have prepared a written resignation which I will hand to the Clerk and ask him to read." The letter was read by the Clerk and is as follows:

Parliament House,
Melbourne, C.1,
August 1, 1934.

To the Clerk of the Legislative Assembly,
Melbourne.

DEAR SIR,

For the reasons which I have stated to the House I resign the office of Speaker of the Legislative Assembly.

Yours faithfully,
MAURICE BLACKBURN.

Just as the Clerk finished reading the resignation the Speaker stepped down from the Speaker's Chair.

The Attorney-General, who was in charge of the House, addressing himself to the Clerk, moved that the House do now adjourn.

The Clerk, by direction of the House, put the question for the adjournment of the House, which was agreed to.

On 20th October, 1942, Mr. Slater announced from the Chair his intention to resign from the office of Speaker at the close of the sitting. When the House met next day the Clerk announced the receipt of the resignation which he read. The House then proceeded to the election of a Speaker.

South Australia

In the *House of Assembly* the Speaker addresses his resignation to the Clerk who, pursuant to S.O. 32, reports the vacancy in the office to the House at its next sitting, if the House is then in Session. If it is in Recess, the Clerk reports the vacancy to the House on its return from hearing the Governor's Speech on the opening of the next Session (S.O. 33).

In either case, the House proceeds forthwith to the election of a new Speaker, pursuant to the Standing Orders.

Queensland

In Queensland the Speaker sends a letter of resignation to the Clerk who, at the next sitting of the House, informs the House of the receipt of the letter, when the House proceeds to the election of the new Speaker.

Tasmania

The Constitution of Tasmania[14] makes no provision for the method of resignation of the President of the Legislative Council or Speaker of the House of Assembly, but in 1914 and 1948 the Speaker addressed his resignation to the Clerk of the House asking him to announce such resignation immediately the House next met, whereupon the House proceeded to elect a successor.

Western Australia

In Western Australia the following Speakers of the *Legislative Assembly* resigned during the currency of a Parliament: Hon. M. F. Troy on 13th February, 1917; Hon. E. B. Johnston, 1st March, 1917; Hon. James Gardiner, 28th June, 1917; and Hon. A. H. Panton, C.M.G., on 24th March, 1938. In the case of Sir James Lee Steere, the Deputy-Speaker, who had been occupying the Chair during the Speaker's illness, immediately left the Chair on receipt of notification of the Speaker's death, as he then ceased to be Deputy-Speaker. The Premier, addressing the Clerk, moved the adjournment of the House until the next day, when a new Speaker was elected. In the case of the four resignations, letters were addressed to the Clerk.

After the Clerk had read the resignation to the House, the Premier nominated a successor, who, after his election, proceeded to present himself to the Governor at Government House. The new Speaker does not lay claim to the privileges, which were granted by His Excellency at the beginning of the Parliament, but he does receive a Commission enabling him to swear-in members.

New Zealand

No special procedure is laid down for the resignation of the Speaker of the House of Representatives and no case is known to have occurred. It is most likely, however, that as his appointment is confirmed by the Governor-General, he would notify the Governor-General of his resignation. It is also necessary that the Clerk should be notified because it is he, under S.O. 21, who has to report the matter to the House at a next sitting. A Minister of the Crown has then to acquaint the House of His Excellency's desire that the House proceed to the election of a new Speaker. This would indicate that the Speaker would also notify the Prime Minister of his intention to resign. If the resignation takes place during the Recess, there is no need for the Clerk to notify the House, which, at its first meeting, proceeds to elect a new Speaker as it does at the opening of a new Parliament.

Western Samoa

The Standing Orders provide that the High Commissioner shall be entitled to preside over every meeting of the Assembly; but if he is not present at any meeting he shall appoint a member of the Assembly to preside over that meeting.[15] The question of resignation does not therefore arise.

In the absence of the High Commissioner it is usual for the Deputy High Commissioner, who is also Secretary to the Government, to preside at all meetings.

Union of South Africa

Senate.—In the Union of South Africa, S. 27 of the South Africa Act, 1909,[16] provides that the President may "resign his office by writing under his hand addressed to the Governor-General". The Governor-General thereupon transmits such resignation to the Clerk of the Senate.

At the first meeting of the House following such resignation, the Clerk reads the letter from the Governor-General, and the House thereupon proceeds to the election of a new President.

House of Assembly.—S. 46 of the South Africa Act, 1909, provides that the Speaker "may resign his office or his seat by writing under his hand addressed to the Governor-General", and S.O. 14 provides

that "when a vacancy has occurred in the office of Speaker, the Clerk shall report the same to this House at its next sitting, whereupon this House shall forthwith proceed to the election of a new Speaker in the manner hereinbefore provided".

Dr. Jansen was the first Speaker of the Union House of Assembly to resign office, when a letter from the Secretary to the Governor-General enclosing the Speaker's formal resignation was laid on the Table of the House at the earliest opportunity.[17]

The attached extract from the Clerk's Report for the Second Session of 1929 on "Resignation of Speaker after dissolution of Parliament" reads as follows:

> Parliament was dissolved on 30th April, 1929, but Mr. Speaker Jansen continued to act as Speaker until 19th June, when he resigned in order to accept office as Minister of Native Affairs. This was in compliance with S. 34 of the Powers and Privileges of Parliament Act, 1911[18] (under which, notwithstanding the dissolution of Parliament, the Speaker is deemed to be Speaker for certain purposes until a new Speaker has been chosen), and with S. 46 of the South Africa Act.
>
> In the old Cape Colony, Sir Christoffel Brand resigned during a Session, and Sir David Tennant during a Recess between two Sessions of the same Parliament.

A new Speaker was not elected until 19th July, when Parliament met, and in terms of the provisions of S. 59(2) of the Electoral Act, 1918, Amendment Act,[19] the Clerk of the House performed such duties of Mr. Speaker as were required for purposes of the electoral law until the new Speaker was chosen.

On 8th November, 1950, and during a Recess, the Hon. J. F. T. Naudé resigned the Speakership in a letter addressed by him to the Governor-General in order to become Minister of Posts and Telegraphs, and the Secretary to the Governor-General sent a copy of the letter to the Clerk of the House of Assembly. The election of the new Speaker took place at the beginning of the next Session.

Provincial Councils

In the Provincial Councils of the Union, the Chairman of the Council hands his resignation to the Clerk of the Council, the Clerk reporting the same at the next sitting, when the Council proceeds to the election of a new Chairman as at the opening of a new Session under the Standing Rules.

India

Central Parliament

Under the Constitution of India, the Vice-President of the Republic is *ex officio* Chairman of the *Rajya Sabha*, which body has the election of the Deputy Chairman, who may resign by writing under

his hand, addressed to the Chairman. The Deputy Chairman may be removed from office by Resolution passed by a majority of all the other members of the Council, on fourteen days' notice being given.[20]

The Vice-President is elected by the members of both Houses of Parliament and holds office as such for five years (he may not be a member of either House or of that of a State), but may resign therefrom by writing under his hand, addressed to the President. He may likewise be removed from the office of Vice-President in the same manner as provided for above in the case of the Deputy Chairman, but the Vice-President continues to hold his office as such, notwithstanding the expiration of his term, until his successor enters upon his office.[21]

The Speaker of the *Lok Sabha* resigns his office by writing under his hand, addressed to the Deputy Speaker. He may also be removed from office by Resolution of the then members of the House. In event of dissolution, the Speaker continues in the office until immediately before the first meeting of the House of the People after the dissolution.[22]

At any sitting of the Rajya Sabha or of the Lok Sabha while any Resolution for the removal from office of the Vice-President, or of the Chairman, or Deputy Chairman, as the case may be, or of the Speaker in respect of the Lok Sabha is under consideration, none of these officers may preside. Each has, however, the right to speak in, and otherwise take part in, the proceedings of the House while any Resolution for his removal from office is under consideration in the House and is entitled to vote only in the first instance on such Resolution or on any other matter during such proceedings but not in the case of an equality of votes.[23]

The proceedings which followed the death of Mr. Speaker Mavalankar in February, 1956, are described in Shri Shakdher's article "Appointment of the Speaker of the Lok Sabha", which will be found on p. 123.

State Legislatures

The Constitution of India lays down that the Chairman or Deputy Chairman of a Legislative Council,[24] and the Speaker or Deputy Speaker of a Legislative Assembly,[25] may at any time resign his office by writing to his Deputy or his superior, as the case may be. He may also be removed from office by a majority of all the then Members of the Council or Assembly.

When the office of Chairman[26] or Speaker[27] is vacant, his duties are performed by the Deputy, or, if the office of the Deputy is also vacant, by such a member as the Governor may appoint for the purpose. It follows that during the election of a Chairman or Speaker at the beginning of a new Legislature, the Chair is always taken by a nominee of the Governor.

Pakistan

Under the provisions of sub-section (2) of section 22 of the Government of India Act, 1935, as adapted for Pakistan, the Speaker of the Constituent Assembly of Pakistan is also the Speaker of the Federal Legislature of Pakistan.

In the case of vacancy in the office of the Speaker of the Constituent Assembly of Pakistan due to death or resignation or otherwise, a date for holding the election for the purpose of filling up the vacancy is fixed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by a member of the Constituent Assembly appointed by the Governor-General, and a notice showing the date fixed for the election is sent to every Member of the Assembly by the Secretary. The election is by ballot, the Chair being taken by the Deputy Speaker or appointed Member.

Federation of Rhodesia and Nyasaland

Federal Assembly.—While, happily, this situation has not yet arisen in the short life of this Parliament, the matter is dealt with in S.O. No. 10(1) as follows:

10 (1). Whenever a vacancy through any cause shall have taken place in the office of Speaker, the Clerk shall report it to the House, whereupon the Deputy Speaker shall take the Chair as Speaker, provided that when the House proceeds to the election of a new Speaker the Clerk shall act as Chairman for the purpose of that election.

From that S.O. it is clear that the House need not proceed with the election of the new Speaker forthwith and that the Deputy Speaker does not preside for the purpose of the election.

At the next sitting following the vacancy, bells would be rung and a quorum having assembled, the Serjeant-at-Arms would enter, bearing the Mace in the downward position (*i.e.*, with the head resting in the crook of the left arm), and lay it under the Table. The Clerk would then inform the House of the vacancy and the Deputy Speaker take the Chair, the Mace being placed on the Table.

When the House is ready to proceed with the election of a new Speaker, the Deputy Speaker would leave the Chair, the Clerk acting as Chairman for the election. Subsequent proceedings would take the normal form except that there would be no claim for privileges.

Southern Rhodesia

S.O. 14 reads:

Whenever a vacancy through death, resignation or other cause shall have taken place in the office of Speaker or Deputy Speaker, the Clerk shall report the same to the House, whereupon the House shall forthwith proceed to the election of a new Speaker or Deputy Speaker as the case may be, in the manner hereinbefore provided.

Such a vacancy in the Speakership has occurred once only since 1924. In 1952 Mr. Speaker Welsh resigned during the recess between the Fourth and Fifth sessions of the Seventh Parliament, on grounds of ill-health, addressing his letter to the Clerk of the House. At the first sitting of the next session the Clerk announced this fact in the House and read the letter, intimating that, in terms of the Standing Order, the House would proceed forthwith to the election of a new Speaker. On motion made and seconded, the Deputy Speaker was elected with the same ceremony and procedure observed at the election of Speaker at the commencement of a new Parliament.

As this election created a vacancy in the office of Deputy Speaker, on an intimation by the Clerk, the House proceeded at once to elect a new Deputy-Speaker.

The Speaker-Elect then announced his intention to present himself and the Deputy Speaker-Elect to the Governor for Her Majesty's Royal Approbation, accompanied by some of the Members and officers of the House. Business was accordingly suspended on motion made to enable Mr. Speaker's procession to walk to the Governor's Office, and, on resumption, Mr. Speaker announced that the Governor had signified approval of the choice the House had made of both officers. He then took the Chair and the ceremony of the opening of the new session proceeded.

To enable the election to take place before the opening, the House assmbled approximately two hours earlier than is usual on the occasion of a new session, not being the first session of a new parliament.[28]

On his impending appointment to a Cabinet post in November, 1954, the Deputy Speaker and Chairman of Committees addressed his letter of resignation to the Clerk of the House, who was directed by Mr. Speaker to read it to the House before public business.

In terms of the Standing Order, Mr. Speaker stated that the House would proceed forthwith to the election of a new Deputy Speaker and Chairman of Committees. One proposal only was made and seconded and that Member declared by Mr. Speaker duly elected. Mr. Speaker then stated his intention to present the new Deputy Speaker-Elect to the Officer Administering the Government for Her Majesty's Royal Approbation.

Business was then suspended to enable Mr. Speaker, accompanied by some Members and the officers of the House, to present the Deputy Speaker-Elect to Her Majesty's Representative. On resuming business about half an hour later, Mr. Speaker informed the House that the Officer Administering the Government had approved the choice of the new Deputy Speaker. The House thereupon proceeded with its business.[29]

Northern Rhodesia

An ("official") Speaker is appointed by the Governor in pursu-

ance of Instructions from the Secretary of State and holds office during the Queen's pleasure. He does not vacate office on the dissolution of the Legislative Council.[30]

The Colonies

In the Colonies the practice in regard to the resignation from office of the Presiding Member varies in accordance with the nature of the Constitution and is represented in the following notes. In many of the Crown Colonies, the Governor presides over the Legislative Council.

The Bahamas

The Speaker resigns to the House of Assembly in person, or by letter addressed to the Chief Clerk.[31]

Bermuda

The President of the Upper House—the Legislative Council—is appointed by the Governor and is usually the Chief Justice. His resignation would presumably be signified to the Governor.

British Guiana

In the Legislative Council established under the British Guiana (Constitution) (Temporary Provisions) Order in Council, 1953,[32] the Speaker is appointed by the Governor, to whom his resignation would presumably be signified.

East Africa High Commission

The ("official") Speaker is appointed by the High Commission under the Official Seal and such appointment can be revoked by the same authority.[33]

Gold Coast

Although the Speaker is elected by the Legislative Assembly, his resignation must be signified by writing to the Governor, and becomes effective as soon as the Governor has received it.[34] The election of the Speaker, whether at the beginning of a Parliament or on a casual vacancy, is conducted by the Clerk.[35]

Jamaica

The resignation of the Speaker is effected by writing under his hand to the Governor.[36]

Kenya

The ("official") Speaker resigns by writing under his hand to the Governor.[37]

Federation of Malaya

The Speaker is appointed by the High Commissioner from among any suitable persons, including members of the Council, who may be available as being entirely appropriate in the present circumstances.[38] His resignation would therefore presumably be addressed to the High Commissioner.

Nigeria

House of Representatives.—Under the present Constitution[39] the Governor-General appoints the Speaker of the House of Representatives by Instrument under the Public Seal. His resignation is addressed by writing under his hand to the Governor.

The Speaker presides at the sittings of the House or, in his absence, "the Deputy Speaker of the House", or in the absence of both "such member of the House as the House may elect for that purpose".[40] So that on the death or resignation of the Presiding Officer, and pending the appointment of another Speaker by the Governor-General, the Deputy Speaker or such member of the House as the House may elect shall preside.

Northern Region.—The Governor himself presides over the House of Chiefs,[41] and appoints a Deputy President in that House;[42] he also appoints the President and Deputy President of the House of Assembly.[43] All the appointments in question may be made from within or outside the membership of the House, and all resignations must be addressed in writing to the Governor.

Western Region.—All offices in both Houses are elective; the President and Speaker may be elected from within or outside the membership of their respective Houses, but the Deputy President and Deputy Speaker must be chosen from among the Membership. Resignations must be addressed in writing to the House.[44]

Eastern Region.—In this Regional Parliament, which is unicameral, the Speaker is appointed by the Governor (to whom he would address his resignation). The Deputy Speaker elected from among the membership of the House, and would signify his resignation in writing to the House.[45]

Sarawak

The Chief Secretary, who is one of the *ex officio* members of the Council Negri, is President thereof.[46]

Singapore

It was recommended in the Rendel Report[47] that the Speaker should be elected by the Legislative Assembly from a panel of three to five candidates selected by the Governor from outside the Assembly; the Secretary of State decided, however, that the appointment should be made in the first instance by the Governor, until a suitable method of election was evolved by the Legislative Assembly.

Trinidad and Tobago

The ("official") Speaker is not either an *ex officio*, a Nominated or elected member of the Legislative Council, nor may he hold any office of emolument under the Crown, but is appointed by the Governor, acting in his discretion, by Instrument under the Public Seal of the Colony; he only holds office "during Her Majesty's pleasure" for such period as may be specified in the Instrument appointing him. The Speaker does not vacate office by reason of a dissolution of the Legislative Council. He resigns office by writing under his hand, addressed to the Governor, and upon receipt of such resignation by the Governor the office of Speaker becomes vacant.[48]

Mr. Speaker Savary resigned on 12th March, 1955, on grounds of ill-health and died on 17th March, 1955. It was found expedient, in view of the impending dissolution of the Legislative Council, not to appoint a new Speaker, and the Deputy Speaker was allowed to carry out the functions of the Speaker of the House.

[1] Vol. II, 114. [2] Vols. III, 31; IV, 21, 35; X, 44; XI-XII, 47; XIII, 71; XVIII, 201. [3] Nos. V, XVI, XIX and XXIII. [4] May, 15th Ed., p. 271. [5] *Ibid.*, 272. [6] 63 & 64 Vict., c. 12, s. 17. [7] *Ibid.*, s. 35. [8] Votes and Proceedings, Session 1909, p. 59. *Hansard*, Vol. L, pp. 1629-32. [9] Votes and Proceedings, Session 1909, pp. 61-2. *Hansard*, Vol. L, pp. 1669-1716. [10] Section 35. [11] Votes and Proceedings, Session 1940-43, p. 549. *Hansard*, Vol. 175, pp. 5-7. [12] S.O. 25, 26 and 27. [13] Votes, No. 43. [14] 25 Geo. V, No. 94. [15] S.O. 7. [16] 9 Edw. VII, c. 9. [17] 1929 Votes, (II) 4. [18] No. 19 of 1911. [19] No. 11 of 1926. [20] Art. 89. [21] Art. 67. [22] Art. 94. [23] Art. 96. [24] Art. 183. [25] Art. 179. [26] Art. 184. [27] Art. 180. [28] V. & P., 1952, p. 2. [29] V. & P., 1954, p. 398. [30] *See* THE TABLE, Vol. XVII, p. 63. [31] *Manual of Procedure*, 1934, p. 28. [32] *See* THE TABLE, Vol. XXII, p. 120. [33] *See* THE TABLE, Vol. XVII, 280. [34] S.I., 1954, No. 551, s. 25(3). [35] S.O. No. 2. [36] *Constitution*, s. 41, and THE TABLE, Vol. XIII, 201. [37] R.I., 1948, XVA; *see also* THE TABLE, Vol. XVI, 69, and 1955 *Hans.*, Vol. LXVI, cc. 1-4. [38] *See* THE TABLE, Vol. XXIII, p. 115. [39] *See* THE TABLE, Vol. XXIII, p. 119, and S.I., 1954, No. 1146, s. 7(1) (3). [40] *Ibid.*, s. 72(1). [41] S.I., 1954, No. 1146, s. 20(1). [42] *Ibid.*, s. 20(2). [43] *Ibid.*, s. 23(1) (2). [44] *Ibid.*, ss. 28, 31. [45] *Ibid.*, s. 33. [46] *Order*, No. c.—21 (Const. 1941). [47] *See* THE TABLE, Vol. XXIII, p. 124. [48] S.I., 1950, No. 510 (The Trinidad & Tobago (Constitution) Order in Council, 1950).

IV. THE ROYAL ASSENT

It might be a permissible paradox to say that the procedure of the Parliament of the United Kingdom of Great Britain and Northern Ireland has for centuries been conducted on the assumption that no one can read or write except the Clerks.* Thus, the Bills and amendments are (according to the strict letter of the forms of procedure) to

* No doubt it has always been recognised that the ecclesiastical functions of the Lords Spiritual required them to be able to read. But high rank in the Church did not in all cases presuppose the ability to write.

be read by the Clerks; the Journals and minute books are kept by the Clerks; and no Member of either House is required to put pen to paper during the passage of a Bill.

Although, of course, for some two hundred years it has been the practice to print copies of Bills for the use of Members in the two Houses, this is not, as a matter of procedure, strictly necessary. Only one copy of a Bill is really needed; this is what is known as the "House copy": it is sent from one House to the other, and it lies on the Table in the House of Lords to receive the Royal Assent. Throughout its passage, this Bill remains in the custody of the Clerks, and it is unlikely that most Members even know of its existence. In it are pasted the amendments made during the passage of the Bill through the second House and subsequently; and on it are written those antique French formulæ by which the assent of the two Houses is signified.

The assent of the Crown is also signified by ancient French formulæ; but although these words—la Reyne le veult, etc.—are pronounced over the Bill, they are never written on it; they only come to be written, after the Royal Assent, on the official copies of the Act. And, with the signature of the Clerk of the Parliaments, they are the only authentification of the Acts.

In order fully to understand the system of giving the Royal Assent to Bills in Parliament, it is necessary briefly to look back at the origins of Parliament itself. The formal structure or skeleton of a Session of Parliament consists now, as it always has consisted, of four elements—first, the summons, sent out by Writ or announced at the end of the previous session; second, the meeting of both Houses, at which the Sovereign declares the work that she and her Government wish the Parliament to do; third, the separate deliberations of the Houses, at which the completion of that work is attempted; and fourth, the final meeting of the two Houses, again (in theory) in the presence of the monarch, at which the proposals made by the two Houses receive the royal approval, and the Members are thanked and dismissed by the Sovereign. In the Parliaments of the Middle Ages, Bills which were intended to be given the force of law were launched in the two Houses either by members of the Government, or by private Members. In either case, they were subject, as now, to amendment during their passage through Parliament; but in the Middle Ages they were also subject to amendment by the Crown. For a medieval king, such as Edward III, upon hearing towards the close of a Session that certain proposals had received, or were about to receive, the assent of the two Houses in Parliament, might make up his mind that he wished to make additional qualifications to the Bills concerned. Upon coming to Parliament at the end of the Session, he would accordingly, through the mouth of the Clerk, give his consent with provisos. He might alternatively, of course, refuse his assent altogether; or he might merely declare that the matters contained in

the Bill already formed part of the law of the land. From these royal speeches, made in response to Bills, there have now been distilled the four formulæ which may now be applied to Bills of various types. Thus, to an ordinary Public Bill the response is "La Reyne le veult"; to a Bill which makes a grant of money for the public service, either by the imposition of a tax or by the release of money into Government channels, "La Reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult"; for what is now known as a Personal Bill (that is to say, a Bill concerning the private affairs of a particular person), "Soit fait comme il est désiré"; and, finally, to a Bill of any type which is refused, "La Reyne s'avisera" (a formula last used by Queen Anne in 1707).

The normal practice for many centuries was that the Parliament was closed, as well as opened, by the Sovereign in person, and it was usual, though not invariable, for the Royal Assent only to be given to Bills at the close of a session.* When the King was abroad, of course, he might appoint a Lieutenant or Protector to open, carry on, and close a Parliament; but if he was within the kingdom, it was the duty of the Sovereign in person to give his Royal Assent to Bills. In 1542, however, King Henry VIII was faced with the disagreeable task of giving his assent to a Bill for the execution of his wife. This was too much, even for him, and he therefore caused to be inserted in the Bill a couple of clauses to the effect that his assent to the Bill might be given by Letters Patent, notwithstanding the invariable previous custom. No one seems to have questioned at the time this curious mode of invalid self-validation, and the poor Queen was duly beheaded; but the fashion thus set very slowly spread down the centuries until the time of George III. Thus, in the sixteenth century the Royal Assent was given by Commission on three occasions in all; in the seventeenth century on nineteen, of which fourteen were in 1642-43; and in the first half of the eighteenth century, on twenty-three occasions. In the twenty years between 1750 and 1770 there were forty-two Commissions for giving the Royal Assent, and thereafter they became very numerous.[1] It was, however, still a habit of George III and his immediate successors to prorogue Parliament in person, and, when so doing, to give the Royal Assent to perhaps a dozen of the most important Bills, the remainder having been polished off a few days before by Commission. But Queen Victoria, soon after her accession, began to miss prorogations; and after 1854 she never came, except to open Parliament. It is possible that, but for the untimely death of the Prince Consort in 1861, which drove the Queen, to a great extent, into seclusion and out of public life, she might still have come occasionally in person to prorogations; but, in

* Sir Thomas Smith, Secretary of State to Queen Elizabeth I, writes in his "Commonwealth of England"—"Thus no Bill is an Act of Parliament, until both the Houses severally have agreed with it, no nor then neither. But the last day of that Parliament or Session the Prince cometh in person in his Parliamentary Robes, and sitteth in his state . . ." to give the Royal Assent.

this country, the lapse of 100 years without a personal prorogation or Royal Assent by the Sovereign may almost, perhaps, be said to have established a convention.

None the less, it is perhaps worth recording what used to be the procedure when the Queen gave her Royal Assent, and made her final Speech from the Throne in person. Upon arrival in the Robing Room at the far end of the Royal Gallery, the Queen was attended by the Clerk of the Parliaments with a list of the Bills which were ready for Royal Assent. In earlier days, the Clerk had attended upon the King outside the Palace of Westminster. Thus, Macaulay records that the Clerk of the Parliaments waited upon William III in Kensington Palace the night before prorogation with a list of the Bills. But, in either case, the Clerk read out the list and the Queen nodded her assent to each. Upon her arrival in the Parliament Chamber, the list of Bills was again read out, this time by the Clerk of the Crown. No doubt originally the Clerk of the Crown had picked up the Bills one by one as they lay and read out their titles direct, but by the sixteenth century he seems to have had a list of the titles specially prepared.[1] The Clerk of the Parliaments received what *The Times* for 14th August, 1854, describing the last occasion on which the Royal Assent was given in person, calls "a gentle inclination of the head" from the Queen on the Throne, and he then turned round and pronounced the words of Royal Assent.

It will be seen that in this process of personal Royal Assent, no document embodying the Royal Assent is prepared or is required. Any advice which the Queen may have needed from her Ministers was given through ordinary ministerial channels; Parliament, as such, knew nothing of it. Queen Elizabeth I and Charles II, indeed, would hold long whispered colloquies with their Ministers on the Throne, in full view of both Houses, before assenting to Bills; but apart from this the machinery by which the royal mind was made up has always been invisible to Parliament.

The procedure by which the Royal Assent is given by Commission is necessarily more complicated. In the first place, a list of the Bills which are ready for Royal Assent, or will be ready on the date of the Commission, is prepared by the Clerk of the Parliaments and sent to the Crown Office, who prepare the Letters Patent. All the Bills passed must be included in this list: Charles II once gave directions that a Bill be omitted, and was severely snubbed and forced to recant by the angry Commons, with the support of the Lords. It is not necessary here to consider the complicated steps by which the Lord Chancellor and the Home Secretary secure the Queen's signature to the Letters Patent: suffice it to say that she thereby appoints a Commission consisting of three or more Lords who are Privy Councillors to give Her Majesty's assent to the Bills whose titles are listed in the schedule to the Letters Patent appointing the Commissioners; and she then declares that when this has been done, the necessary steps are

to be taken to register and promulgate the Acts, which will henceforth be of as good effect in the law as if Her Majesty had been personally present to give her assent to the same. When the time comes for the Commission to sit, the Lords temporarily adjourn, and the Commissioners robe and take their seats on a form placed in front of the Throne. Black Rod is sent to fetch the Commons, and on their arrival the Letters Patent appointing the Commission and giving the Queen's assent to the Bills are read by the Reading Clerk. These Letters Patent are signed by the Queen and sealed with the Great Seal. After they have been read, the Clerk of the Crown reads out the title of each Bill, and the Clerk of the Parliaments, turning to the Commons at the Bar, recites the words of assent to each. In law, the enactment of the Bills assented to is deemed, from that moment, to be ante-dated to the previous midnight.

The Letters Patent, after appointing the Commissioners and giving Her Majesty's assent to the Bills, direct "the Clerk of Our Parliaments to enrol the same as is requisite". In olden days, this meant that the Clerks in the Parliament Office would reach for their quills and eventually produce, in one parchment roll, all the texts of all the Acts passed in that Parliament. In between the texts of the Acts there would be inserted short paragraphs signifying, first, that the following Bill was exhibited in this Parliament, and secondly, that the Sovereign's assent was given to it in the following words, namely, "Le Roi le veult", or whatever the appropriate formula might be. In modern times, however, these "Rolls of Parliament" have been replaced by ordinary book-shaped copies of the Acts, which are printed on vellum and signed by the Clerk of the Parliaments. At the head of each is written in a fair hand "La Reyne le veult", or one of the other formulæ. Two of these vellum copies are prepared for each Bill: one goes to the Public Record Office, and the other is kept in the Parliament Office. From the same type are printed the ordinary official copies of the Acts. The ancient office of Queen's Printer of Acts of Parliament is now held by the Controller of the Stationery Office, who therefore prints and publishes the Acts. Until the Acts began to be printed in 1485, parchment copies of all the statutes, sealed with the Great Seal, were despatched on horseback to the sheriffs of every county, to be read in the public places of the principal towns and used at the assizes, etc. In these days, this task of promulgation to the law courts and other public bodies is undertaken by the Home Office; but, of course, a Queen's Printer's copy of an Act of Parliament bears its own authority on its face, and is accepted without question anywhere in the kingdom.

The opening words of this article may have seemed to some readers irrelevant to an account of the machinery of giving the Royal Assent; but perhaps we can now conclude that they were legitimately placed at the front of this account, because they point to what is perhaps the most surprising fact about the procedure of Royal Assent—that there

is, in the essence of the granting of the Royal Assent to a Bill, no necessity whatever for the production of any document or the writing of any words by any person. Provided that the Sovereign attends the Parliament in person, all that is necessary is for his or her assent to be given verbally in the right formulæ to the Bill as it lies on the Table in full Parliament; and it thereupon becomes the law of the land. The machinery of Letters Patent and royal and ministerial signatures, which at present is normally involved in the granting of the Royal Assent to Bills, arises simply from the fact that the monarch does not attend in person, and that, therefore, sundry documents of the most formal and ceremonious character have to be prepared for her signature. But none of these documents is essential for the passing of the Bill.

It might be thought by those unacquainted with the history of the matter that the desuetude into which the personal Royal Assent of the Sovereign has fallen, or is falling, and the fact that since 1707 the formula of refusal—" La Reyne s'avisera "—has never been used, is in some way a consequence of the development of the Cabinet system of government through responsible ministers, which is commonly supposed to have begun with the Hanoverian dynasty in 1715. This supposition is fortified by the coincidence that the machinery for giving the Royal Assent by a Commission involves the intervention of both the Home Secretary and the Lord Chancellor, who might be thought, in playing their parts in the process, to be advising Her Majesty to grant her assent. But the better view is probably that the gradual disuse of the full ceremonial of granting the Royal Assent is due rather to the exacting demands which it made upon the Sovereign when Acts become very numerous, and also to the personal circumstances of Queen Victoria on the death of her husband.

[1] For further details of the frequency of Royal Commissions, see " Parliamentary Affairs", Vol. III, No. 2, p. 313.
[2] Sir Thos. Smith, " Commonwealth of England ", Part II, s. v, " Parliament".

V. HOUSE OF LORDS: SELECT COMMITTEE ON THE POWERS OF THE HOUSE IN RELATION TO THE ATTENDANCE OF ITS MEMBERS

The House of Lords has always experienced some difficulty in securing a full attendance of its members. The earliest recorded example is probably that of the fourteenth-century abbot who, on being admonished for non-attendance, successfully claimed that he was not entitled to a Writ of Summons. Again the Lords Journals

for the 19th of April, 1610, record that "His Majesty took notice of the slender appearance in the House yesterday; and took it in ill part that his service in that behalf is so much neglected". The Lord Chancellor therefore pointed out to the House the greatness of the contempt which every Earl and Baron who did not attend the House committed, in disobeying the charge and commandment of attendance contained in the words of the Writ; and he reminded the House of the heavy punishment which might be inflicted upon offenders. For some years thereafter it became the custom for Peers who were incapacitated through sickness, or had leave of absence from the King, or who were out of the Kingdom, to excuse themselves by letters or through the mouths of their friends; but in the second half of the seventeenth century the problem had again become acute, and attempts had been made to solve it by fining absent Peers and, in one or two cases, by imprisoning those who failed to obey an order for attendance. During the nineteenth century attempts were made on such special occasions as Queen Caroline's Degradation Bill in 1820 and the trial of Lord Cardigan in 1841 to ensure a full attendance; but although the notoriety of the occasion brought a large crowd of Peers to the House in 1820, still there were a number who did not attend and had no good excuse; and in 1841 nearly half the House was absent without excuse.[1]

The number of temporal Peers seems to have declined at first from about 100 in 1300 to 60 odd in 1600; thereafter it slightly rose to about 175 in 1760; from then on the rise to the present figure of 850 has been steady and rapid.[2] This vast increase in numbers, together with the changed political situation, has completely altered the problem of attendance. In the first place, the Chamber is uncomfortably crowded if more than 400 Peers attend; and in the second, there have been repeated allegations in the last hundred years that Bills sponsored by progressive Governments in the House of Commons have been, or may be, thrown out by a host of reactionary "backwoodsmen" who, so it is said, never come to Parliament except for the purpose of blocking progressive legislation. It was no doubt considerations such as these which led Lord Samuel, in one of the post-war debates on the reform of the House, to declare that the House of Lords was dependent for its proper functioning upon the permanent absenteeism of more than half its members; and which led Lord Exeter on the 17th of March, 1953, to propose that no Peer who had not attended the House on a certain number of occasions in the previous session should be allowed to take part in a division.[3] Lord Exeter's proposal was based upon the technicality that divisions in the Lords were only instituted by Standing Order in 1670: before that the Lords voted by rising *seriatim* in their places, beginning with the junior Baron, and saying "Content" or "not Content". It was this right of declaring his opinion individually which was guaranteed to a Peer by his Patent and Writ; the right of taking part

in a division, which had been conferred by Standing Order, could also be taken away by Standing Order.[1] Lord Exeter's proposal was clearly intended to exorcise the bogey of the "backwoodsmen"; and that was also clearly the purpose of another proposal put forward in one of the debates on the reform of the House, that no more than ten Peers should be allowed to take the Oath on any one day.

It was in this atmosphere that the Select Committee was appointed on the 21st of June, 1955, "to inquire into the powers of this House in relation to the attendance of its members". The fifteen members of the Committee had between them an altogether exceptional knowledge and experience of the law, of Parliament, and of the Constitution; they were assisted by learned memoranda from the Attorney-General and his Assistant Counsel in Peerage Cases (Mr G. D. Squibb), the Clerk of the Parliaments, the Clerk of the House of Commons, the Clerk of the Crown in Chancery, and by evidence from Mr. Squibb and Lord Simonds, a Lord of Appeal and ex-Lord Chancellor. Lord Exeter, a member of the House for fifty-seven years, also gave evidence to the Committee.

In their deliberations the Committee considered a number of questions much more fundamental than those which normally come within the scope of parliamentary deliberations. The Committee's approach to these questions was, of course, affected by the fact that the Lords, other than the Scottish Representative Peers, do not owe their presence in Parliament to any process of election. But apart from this, there is much of general interest and value in their conclusions upon such matters as the rights and duties that a Writ of Summons imposes upon its recipients; the relation between the powers of the House and the law and custom of the Constitution; whether, and how far, the House is bound by its own precedents; the relation between the powers of the House and the Royal Prerogative; and the question how far the legislative function of the House might be affected by, or should be distinguished from, its judicial function, whether as the ultimate appeal tribunal or as the judicial element in the process of impeachment. In the following paragraphs an attempt will be made to pick out some of these conclusions.

Privilege and Law

Each House is the sole judge of its own powers, the sole interpreter of its own privileges, and the master of its own procedure. But neither House has power to create a new privilege or, by mere resolution, to contravene or override the law, and it is reasonable to infer that the powers of a House of Parliament must be exercised fairly and in accordance with the law.[5]

Limitations of Precedent

The powers of the House clearly rest, in the last resort, upon the custom of Parliament and of the Constitution—that is, upon prece-

dent. But they cannot be limited strictly to precedent, for unprecedented powers of control were taken by the Speaker of the House of Commons in the latter half of the nineteenth century, and—to come nearer to the subject that was before the Committee—the right, which Peers had enjoyed for centuries, to vote in the House by proxy was virtually abolished by Standing Order in 1868 in spite of the explicit recognition at that time of the fact that this right could only be finally removed by Act of Parliament. None the less, the use of proxy votes was permanently suspended by Standing Order.[6] Moreover, no development in parliamentary procedure could ever take place if the two Houses were to be strictly confined to precedent. The Committee, therefore, concluded that established practice could be adapted to current requirements, provided that there was no infringement of constitutional rights. The Committee found that, while there were many matters which should clearly be regarded as purely procedural, and therefore well within the power of the House to regulate by Standing Order, there were others wherein procedure, the custom of Parliament, and constitutional law were so inextricably interlaced that it would be almost impossible to find any definition that would disentangle these three elements. For example, it was clear that rules might be made and varied by the House to settle the order in which business should be taken; but the decisions on peerage cases were governed by a mixture of procedure, law and the custom of Parliament.

Duration of Privilege

The Committee were careful to point out that a corollary of the principle that neither House may create any new privilege is that privileges do not become obsolete and can only be extinguished expressly by Act of Parliament. The mere fact, therefore, that a privilege has not been exercised for a number of years, or centuries, does not make it obsolete.[7]

The Writ

In origin the Writ of Summons was a command from the Crown to attend a parliament, and it therefore naturally fell to the Crown to excuse the attendance of those who could not, through age, sickness, or other good cause, obey the summons. Early in the seventeenth century, however, the House seems to have taken over this power to grant leave of absence; and in 1625 it was established that the Crown had no power, either by withholding Writs or by enclosing with them letters enjoining non-attendance, to try and prevent attendance.[8] Nor, in the view of the Committee, has the House any right either to endeavour to prevent the attendance of any Peer who has received a Writ, or to seek to whittle down the rights conferred upon him by his Writ and Patent, for instance by seeking to prevent him from speak-

ing or voting. In pursuance of its ordinary power to maintain order in debate, the House could clearly eject or suspend any of its members for disorderly behaviour; and on two occasions it has imposed, as part of a sentence on impeachment, the penalty of expulsion.[9] But, apart from this, the House has no power to exclude, wholly or partially, any Peer who is in receipt of a Writ.

Disqualification

Minority, bankruptcy, foreign nationality, treason or felony, and failure to take the Oath of Allegiance disqualify a Peer from membership of the House. All except the first of these disqualifications are statutory; and the Committee took the view that in refusing to allow Peers to sit until they were twenty-one the House had exercised a power of disqualification, but that this power could only be exercised if it applied to membership of the House a disqualification which already existed for other purposes at common law.[10]

Leave of Absence

The Committee concluded that it would be within the power of the House to make provision by Standing Order whereby leave of absence might be more generally applied for and granted. The Standing Orders might provide in substance—

(*a*) that it is the duty of Members of the House to attend regularly or as often as they reasonably can, or else to apply for leave of absence;

(*b*) that a communication be addressed to all Members of the House at the beginning of every Parliament, stating that if they desire to be relieved of the obligation of attendance they should apply for leave of absence, either for the duration of the Parliament or for any shorter period, and further that they should state in reply to such communication whether they do or do not desire to apply for leave of absence;

(*c*) that any Member of the House who fails to reply to such a communication should be regarded as having applied for leave of absence, unless he attends to take the Oath within one month of the beginning of a Parliament;

(*d*) that Members of the House are expected, if they have been granted leave of absence, not to attend until their leave of absence has been terminated by their giving such notice as may be prescribed by Standing Order.[11]

In the view of the Committee, the House would have no power to prescribe a penalty for failure to observe any such new Standing Order; but no difficulty had ever been experienced over the question of obedience to Standing Orders, and the Committee were confident that no sanctions would be necessary.

Apart from these conclusions, much of the interest of the Report

lies in the learned memoranda submitted to the Committee. Questions such as the nature of contempt, and the powers possessed by each House to deal with it;[12] the power of the House of Commons to discipline its Members;[13] the various methods which have been employed for the past six hundred years by the Lord Chancellor's Office to deliver Writs of Summons;[14] what happens when a writ of habeas corpus is issued for the release of a Peer held prisoner by order of the House;[15] the curious behaviour of the House in the eighteenth century in first allowing, then forbidding, and then allowing again, those Scottish Peers who also had English titles to sit in the House;[16] and the various methods which have been employed through the ages for taking and recording a vote—all these ought certainly to be read and noted by any Clerk who can spare the time and is interested in the more curious and devious questions of parliamentary tradition and practice.

[1] H.L., 66 & 67 of 1956, pp. 66-68. [2] *Op. cit.*, p. 66. [3] 181 *Hans.*, 5 & 27. [4] H.L. Paper No. 66, p. 39. [5] *Ibid.*, p. iii. [6] Pp. iv, 46, 69. [7] P. xiii. [8] P. 5. [9] Pp. 8, 70. [10] Pp. x, 71, 73. [11] P. xii. [12] P. 75. [13] P. 83. [14] P. 86. [15] P. 8. [16] Pp. 41, 52.

VI. HOUSE OF COMMONS: VALIDATIONS OF ELECTIONS IN 1955-56

By F. G. Allen,

A Senior Clerk in the House of Commons and Clerk to the Select Committees on Elections

Section 24 of the Succession to the Crown Act, 1707, provides that no person having an office of profit under the Crown shall be capable of being elected, or of sitting or voting as a Member of the House of Commons. On 30th June, 1955, within a month of the meeting of Parliament after the General Election, a Select Committee was appointed to consider the validity of the election of two Members.[1] The first, Mr. J. C. George, was a new Member who at the time of his election was a director and Chairman of Scottish Slate Industries, Ltd., the appointment being in the hands of the Minister of Works as a condition of a loan of public money to the company. The Committee had no difficulty in deciding that Mr. George held office *under the Crown*, but it was less easy to determine whether the office was one *of profit*. Mr. George had certainly had no profit out of his appointment, but had in fact incurred heavy expenses. The Articles

of Association of the company provided that so long as the company remained in debt to the Minister of Works no remuneration should be paid to any director, except with the approval of the Minister. The Attorney-General advised the Committee that, although no such approval had been given, the fact was that it could have been. Mr. George was therefore potentially in a position to get profit from his office, and it was the Attorney-General's view that the appointment was an office of profit under the Crown. The Committee agreed with the Attorney-General and reported their view that Mr. George's election was invalid.

The second case referred to the Select Committee was that of Sir Roland Jennings, who was found to have been for the last thirty-two years a public auditor for the purposes of the Friendly Societies and other Acts. For ten of those years he had sat in the House of Commons. He was a Chartered Accountant and had become a public auditor for the sole purpose of auditing the accounts of his local British Legion and Village Club in order to save them the greater expense of employing another auditor. For his services he had received a nominal statutory fee of one guinea per annum, though in fact it cost his firm more than that to do the work. Apart from his annual statutory fee he could, under the provisions of the Friendly Societies Act, 1896, have been paid such remuneration as the Treasury might have allowed for persons who are public auditors. Sir Roland, therefore, not only had received certain statutory fees, but also, like Mr. George, was in a position to have received public remuneration, although he had not actually done so. The Attorney-General accordingly advised the Committee that Sir Roland was a holder of an office of profit under the Crown on both grounds. The Committee agreed and reported their view that Sir Roland's election was invalid[2] (H.C. (1955-56), 35, for both cases).

The Committee were satisfied that both Members had acted by inadvertence in standing for election when they were office-holders, and stated their opinion that they were disqualified on purely technical grounds. Their report was presented on 12th July.[3]

The Government introduced on 20th July a Bill, entitled the Validation of Elections Bill, to validate the elections of Mr. George and Sir Roland Jennings and to indemnify them from any penal consequences which they might have incurred by sitting and voting.[4] The provision for indemnification protected the Members from liability at the instance of a common informer to a fine of £500 for sitting or voting. The Bill was read a second time on 22nd July.[5] There was no division, but opinions were expressed that mere inadvertence did not make the offence any less offensive. On the other hand, Members obviously realised that any one of themselves might find himself in a similar situation through inadvertence, and there was general agreement that the Government should get on with legislation to bring the disqualification law up to date. The third reading on 25th July

was agreed to in ten minutes.[6] The Lords passed the Bill without debate and it received the Royal Assent on 27th July.[7]

So much for Mr. George and Sir Roland Jennings; but meanwhile another case had come to light and on 13th July, the day after the Committee had presented their first report, the House ordered them to be revived and instructed them to inquire into the election of Mr. C. J. Holland-Martin.[8]

Mr. Holland-Martin had been since 1950 a member of the London Board of Directors of the Bank of New Zealand, during which time he had twice been elected to the House of Commons. For his services he received £550 per annum. There was no doubt in the Committee's minds that the office was one of profit. It was less certain, however, whether the office was under the Crown within the meaning of the Succession to the Crown Act, 1707. Mr. Holland-Martin's appointment to the London Board was made by the principal Board of Directors of the Bank, who are themselves appointed by the New Zealand Minister of Finance, in accordance with the Bank of New Zealand Act, 1945, which vested in the Crown all shares in the capital of the Bank not already so vested. The Attorney-General advised the Committee that the office was certainly under the Crown. But he explained that the appointment could be regarded as a function of the Crown "in right of" the Government of New Zealand, which might be thought to exclude the appointment from the meaning of the Crown as understood in 1707. He quoted cases where the functions of the Crown had been decided not to be limited to one or another territory. Lord Haldane, in Theodore *v.* Duncan,[9] had said, "The Crown is one and indivisible throughout the Empire". The Attorney-General's opinion was that the situation was not changed by the Statute of Westminster, 1931, and that the Crown was not limited to one territory unless expressed in any particular statute to be so limited. He therefore felt that since the Courts would probably decide that the Crown in relation to New Zealand was within the terms of the 1707 Act, he could not say that Mr. Holland-Martin was not liable to an action brought by a common informer.

The Committee agreed with the views expressed by the Attorney-General and reported on 21st July that in their opinion Mr. Holland-Martin's election was invalid.[10]

On 26th July the Government introduced the Validation of Elections (No. 2) Bill which was on the same lines as the previous Bill.[11] They wanted to get the Bill through quickly as there were only two days to go before the Summer Adjournment and they did not want to leave the matter undecided and Mr. Holland-Martin liable to action by a common informer for the whole of that period. Unfortunately for the Government, some Opposition back-benchers, including Mr. Sydney Silverman, took the view that a matter of such constitutional importance should not be rushed through as if it were a formality. After a twenty-minute debate the Second Reading went unopposed,

but when the Government began to try and get the remaining stages of the Bill completed straight away, before proceeding to the main business of the day, Mr. Silverman made it clear that he would not permit this hurried treatment, and the Committee stage was put off till the House re-assembled in October.[12]

On 25th October the Bill was considered by a Committee of the whole House.[13] The Opposition back-benchers, who had already that afternoon listened to some complicated arguments between the Speaker and Members over the very interesting and confused situation which had arisen over the Northern Ireland Election Petitions, spent three-quarters of an hour teasing the Government about their Bill and suggesting that, even if Mr. Holland-Martin were to be indemnified, his election should not be validated. There were no divisions and the Bill was read a third time forthwith. The Lords passed the Bill unamended on 1st November and it received the Royal Assent on the same day.[14]

Meanwhile, a fourth case had been discovered. The Government evidently came to the conclusion that the disqualification disease was not necessarily confined to one or two individual cases but might spread, so they ceased to give the original Select Committee revival orders and "instructions", and on 27th October appointed a new Committee whose order of reference comprised not only the latest case but a general requirement to examine any further cases which might come to their notice.[15]

The Committee's immediate task was to inquire into the circumstances in which Mr. C. A. Howell had been elected when he was a member of certain local tribunal panels appointed by the Minister of Pensions and National Insurance. He had never received any payment and had indeed never performed any of the duties for which he was liable. His letter of appointment specifically stated that he would get no fees, but the Committee were reminded by the Attorney-General that the relevant Acts provided that the Minister could make payments if he decided to do so. The Committee had no difficulty in deciding that Mr. Howell, in a situation somewhat similar to that of Mr. George, was technically disqualified and that his election was invalid. They recommended legislation to indemnify him and to validate his election.[16] The report was presented on 7th November[17] and the Government introduced the Validation of Elections (No. 3) Bill on 16th November.[18] The Second Reading debate the following day lasted three minutes and the remaining stages were taken formally immediately afterwards.[19] The Lords passed the Bill unamended on 22nd November and it received the Royal Assent the same day.[20]

None of these four cases had given rise to serious disagreement either in the Select Committee or in the House. Even in Mr. Holland-Martin's case, where an annual salary had been paid, little, if any, blame had been laid on the Member himself. The most extreme

suggestion was only that he should be indemnified without having his election validated. Nor was this suggestion pressed—the Member had had a majority of nearly 8,000 only two months before! But a case of real difficulty and full of controversial possibilities was waiting round the corner and eventually sprang upon the House when, early in December, it was found that Mr. Charles Beattie was probably also encumbered with a disqualification. New considerations surrounded his case, not least being the fact that he only held his seat as a result of an Election Petition based on his victorious opponent's disqualification. This case, together with the proceedings in the Election Court in Northern Ireland, is dealt with in the succeeding Article.

[1] Votes and Proceedings, p. 85. [2] H.C. 35 (1955-56), for both cases. [3] *Ibid.*, p. 116. [4] 544 *Hans.*, c. 379. [5] *Ibid.*, cc. 723-84. [6] *Ibid.*, cc. 852-5. [7] Votes and Proceedings, p. 167. [8] *Ibid.*, p. 126. [9] Appeal Cases, 1919, p. 706. [10] H.C. 50 (1955-56). [11] Votes and Proceedings, p. 163. [12] 544 *Hans.*, cc. 1199-1211. [13] 545 *Hans.*, cc. 60-76. [14] Votes and Proceedings, p. 210. [15] *Ibid.*, p. 199. [16] H.C. 117 (1955-56). [17] Votes and Proceedings, p. 219. [18] *Ibid.*, p. 243. [19] 546 *Hans.*, cc. 899-900. [20] Votes and Proceedings, pp. 257, 258.

VII. CONTROVERTED ELECTIONS TO THE HOUSE OF COMMONS IN 1955

At the General Election to the House of Commons held on 26th May, 1955, the candidates who received the largest number of votes in two constituencies in Northern Ireland were both convicted felons at the time serving sentences of ten years' imprisonment. The proceedings resulting from these elections are described separately below, since a different procedure was followed in each case.

Fermanagh and South Tyrone Election

Trial of Election Petition.—There were two candidates for this constituency, of whom Mr. P. C. Clarke (Sinn Fein) obtained 30,529 votes and Lt.-Colonel R. G. Grosvenor (Ulster Unionist) obtained 30,268. In view of Mr. Clarke's imprisonment, Lt.-Colonel Grosvenor on 17th June presented a petition to the High Court of Justice of Northern Ireland (Queen's Bench Division), praying that it might be determined that Mr. Clarke was not duly elected or returned and that the petitioner was duly elected and ought to have been returned.

The case was tried at Enniskillen, within the constituency concerned, between 30th August and 2nd September by a court consisting of Black, L. J., and Sheil, J., Judges on the Rota for the Trial of Election Petitions.[1] The Petition, which was read by the Registrar, stated that (*a*) Mr. Clarke had been convicted at Belfast of Treason Felony on 15th December, 1954, and sentenced to ten years' imprisonment, (*b*) he had been in prison at all material times since that date, (*c*) at the date of his nomination and on polling day he had thus been incapable of election, (*d*) the fact of his imprisonment and sentence was on those dates notorious and known to all the electors in the constituency, (*e*) the Petitioner's agent had given notice in the public press that by reason of Mr. Clarke's disqualification all votes for him would be thrown away and would be thereby null and void, and (*f*) since all votes given for Mr. Clarke were in fact thrown away, the Petitioner had received the majority of valid votes cast.[2]

The Petitioner was represented by Mr. W. F. McCoy, Q.C., M.P., Mr. E. W. Jones, Q.C., M.P., and Mr. R. Lowry; no appearance was entered for the Respondent.

In the course of his opening speech[3] Mr. Jones, besides developing the allegations of the Petition, said that prior to the election 30,121 notices had been sent out to 30,121 electors, whose addresses were recorded, and who were believed to be supporters of Mr. Clarke, indicating that Mr. Clarke was disqualified and that all votes for him would be null and void. On 18th August, in accordance with Rule 7 of the Election Petition Rules,[4] notice had been given that Lt.-Colonel Grosvenor objected to 30,121 votes on the grounds that the voters in question had known that their votes for Mr. Clarke would be thrown away. Counsel accordingly suggested that if the Judges did not hold his evidence on notoriety to be adequate, but thought that a scrutiny would be appropriate, the scrutiny of any bundle of 1,000 votes cast for Mr. Clarke would indicate beyond a peradventure that the voters in question had received individual express notice of Mr. Clarke's disqualification. He said:

> The reason I said that we would be prepared to take any bundle of 1,000 votes cast for Clarke is, of course, due to the fact that the majority of Mr. Clarke over Colonel Grosvenor was only 261, and therefore we say that if 262 votes were examined and were found to have been cast by the addressees of this notice . . . then that would indicate that those 262 votes were cast away, and accordingly that, even on that basis, without going further, Colonel Grosvenor would have been the recipient of the majority of lawful votes.[5]

The Petitioner rested his case, however, on the fact that Mr. Clarke's disqualification was one of status, and that provided the electors knew that he was a convicted felon, that knowledge in itself rendered the votes cast for him worthless. Numerous cases were quoted in support of this contention.[6]

It is not necessary here to do more than briefly summarise the evidence called for the Petitioner.[7] Apart from the proof of the

service of the Petition upon Mr. Clarke, the Returning Officer's account of the facts of the election, and evidence from the Clerk of the Crown and the Deputy Governor of Belfast Prison and others relating to Mr. Clarke's conviction and sentence, the burden of the evidence given by no less than ninety-nine witnesses related to the publication of notices of Mr. Clarke's disqualification in the local press (and the circulation of the papers concerned), the dispatch of the individual notices mentioned above, the placing of posters in conspicuous places in the neighbourhood of polling booths (covering all but 6,000 of the electorate), and the publication of the presentation of the election Petition.

After the conclusion of the evidence, Lt.-Colonel Grosvenor's counsel applied for a scrutiny of a bundle of the votes for Mr. Clarke on the lines suggested in his opening speech.[8] The matter was not one of entire simplicity, since Rule 57(3) of the Parliamentary Elections Rules stated that:

> Provided that in making and carrying into effect an order for the opening of a packet of counterfoils or certificates or for the inspection of counted ballot papers, care shall be taken that the way in which the vote of any particular elector has been given shall not be disclosed until it has been proved that his vote was given and that the vote has been declared by a competent court to be invalid.[9]

The difficulty lay in deciding whether the word "disclosed" meant "disclosed to the court" or "disclosed by the court to the public"; if the first, and more restrictive, interpretation were correct, a vote could not be adjudicated upon, since it could not be determined whether it was valid or invalid until the court was satisfied that it had been given in a certain way in defiance of a notice. If, on scrutiny, it were to transpire that an elector who had been identified as voting for Mr. Clarke had not been the recipient of a notice, it might be argued that his vote had been improperly disclosed and the secrecy of the ballot impugned. After some discussion the Court decided to defer any pronouncement upon this matter until it had been decided whether or not the Petition succeeded on the strength of the evidence which had been adduced. The remainder of Counsel's speech[10] was accordingly devoted to a description of the law relating to disqualification, the leading cases in that field, and the relevance of the evidence thereto.

Giving judgment on 2nd September, Lord Justice Black first stated that it was clear, by virtue of s.2 of the Forfeiture Act of 1870, that Mr. Clarke was disqualified at the date of his election, in view of the proof of conviction, sentence and imprisonment which had been furnished.[11] His Lordship went on to say:

> As regards the Petitioner's claim that he was duly elected and ought to have been returned, the Petitioner relies on the principle that if a candidate is at the time of the Election disqualified from being elected to Parliament,

and if due notice is given to electors of that fact, all votes given to that candidate by electors who have notice of the facts constituting the disqualification are considered as not given at all or thrown away. The result is that, even if the candidate so disqualified receives a majority of the actual votes recorded, the candidate next on the Poll may, on Petition, be declared elected if he is found to have a majority of votes after deducting the votes so thrown away from the total votes given to the disqualified candidate. Here the disqualification of Mr. Clarke is a disqualification arising from his status, from the fact that he had been convicted of a felony and sentenced to a term of imprisonment exceeding 12 months, and was still serving that sentence.

In such cases it is well established that, in order to avoid an elector's vote, it is only necessary to prove that the elector had notice of the fact creating the candidate's disqualification. It is not necessary to prove that he was aware of the legal result that such a fact entailed disqualification. The Petitioner's contention is that it had been made abundantly clear to the electorate that Mr. Clarke had been convicted of felony and that at the date of the Election he was a person undergoing a term of imprisonment of more than one year's duration. The Petitioner's agent caused advertisements of double-column width to be inserted in three newspapers circulating in the Constituency, namely, the *Tyrone Courier and Dungannon News* of Thursday, 19th May, 1955, the *Impartial Reporter and Farmers' Journal*—an Enniskillen paper—also of Thursday, 19th May, and the *Tyrone Constitution* of Friday, 20th May. Copies of these newspapers containing these advertisements were produced in evidence before us. The advertisements recited that Mr. Clarke had been convicted of treason felony at the Ulster Winter Assizes in Belfast on the 15th December, 1954, and sentenced to 10 years' imprisonment, and was still serving the sentence, and that, by reason of the said matter, he was, by law, incapacitated and disqualified for being a Member of Parliament. The advertisements then went on: "Now take notice that all votes given for the said Philip Christopher Clarke at the said Election will be thrown away and will be wholly null and void." These newspapers also contained news items intended to convey that the Respondent was disqualified for election.

It is clear from a perusal of these newspapers that they would circulate mainly among supporters of the Petitioner rather than among supporters of Mr. Clarke, though the proprietor of the *Impartial Reporter and Farmers' Journal* estimated in his evidence that the circulation of that paper would be to the extent of 75 per cent. among the supporters of the Petitioner and to the extent of 25 per cent. among the supporters of Mr. Clarke. There were also produced to us copies of newspapers circulating in the Constituency which would obviously find their readers among supporters of Mr. Clarke rather than among supporters of the Petitioner. These were the *Fermanagh Herald* and the *Ulster Herald* of the 21st May, 1955 (apparently two editions of the same paper) and the *Dungannon Observer*, also of the 21st May, 1955. All these papers contained in their news items a statement attributed to the Secretary of the Sinn Fein Executive to the effect that Sinn Fein were already aware of a clause in the Representation of the People Act that the election of a person serving penal servitude could be declared invalid and a new Election held, but that, so far as they knew, there was no legal basis for the statement that, if a candidate was unseated, the next nearest candidate could be declared elected. These statements purported to be in reply to a statement issued by the Unionist Party and quoted in these papers that a convicted felon serving a term of imprisonment in excess of 12 months is a disqualified person and that votes knowingly given to such a person are lost and thrown away. It was also proved by a witness that on the evening of the close of the nominations he had heard this statement by the Unionist Party quoted verbatim during the reading of the Northern Ireland news of the B.B.C., and that he heard it also on the same evening from the Athlone station of Radio Eireann, though

these statements did not give the names of the persons alleged to be disqualified.

It was also proved that on the 23rd and 24th May there were sent by post by the Petitioner's agents to 30,121 electors leaflets headed " Notice of disqualification of candidate ", and phrased in substantially the same terms as the advertisements already mentioned in the *Tyrone Courier and Dungannon News*, the *Impartial Reporter and Farmers' Journal* and the *Tyrone Constitution*. The Petitioner's agent stated in evidence that the 30,121 persons to whom these leaflets were addressed were chosen as individuals believed by him from his long experience of the Constituency not to be supporters of the Petitioner.

Then, on the day of the Election, the Petitioner's agent caused posters measuring about 21 inches by 15 inches to be exhibited in the vicinity of the great majority of the polling stations in the Constituency. These posters were headed in large type " Notice of disqualification of candidate " and were phrased substantially the same as the advertisements published in the newspapers to which we have already referred. It was proved in evidence by a large number of witnesses that, save in 14 of the 132 polling places in the Constituency, such posters were prominently displayed in close proximity to the several polling places and that, except in a very few places, such posters remained so displayed on the day of the poll throughout the hours of the poll (7 a.m. to 9 p.m.). Furthermore, it appeared from copies of the ballot paper produced by the Returning Officer, that Mr. Clarke was described thereon as of " H.M. Prison, Crumlin Road, Belfast ".

In the result, we are satisfied that Mr. Clarke's disqualification was a matter of notoriety throughout the Constituency and that a number of persons far in excess of the majority obtained by him recorded their votes in his favour with full notice of his disqualification. We accordingly determine that the Petitioner, Robert George Grosvenor, was duly elected and ought to have been returned.

In view of the foregoing, we are of opinion that it is not necessary to pass upon the Petitioner's application for a scrutiny further than to say that, in view of the terms of the proviso to Rule 57, sub-rule (3), of the Rules contained in the Second Schedule to the Representation of the People Act, 1949, the matter appears to us to be one of considerable difficulty.[12]

Subsequent proceedings in the House.—On 25th October Mr. Speaker informed the House that he had received a Letter and Certificate from the judges appointed to try the Election Petitions relating to the two controverted elections. After a rehearsal of the material facts and dates, the certificate in Lt.-Colonel Grosvenor's case concluded:

WE HEREBY CERTIFY that at the conclusion of the said trial we determined as follows:

(*a*) that at the date of the said Election on the 26th day of May, 1955, the said Philip Christopher Clarke was incapable of being elected as a member of Parliament and was not duly elected or returned; and

(*b*) that the said Robert George Grosvenor was duly elected to serve in the present Parliament for the said Constituency of Fermanagh and South Tyrone and ought to have been returned.[13]

The Parliamentary Secretary to the Treasury then moved:

That the Clerk of the Crown do attend this House forthwith with the last Return for Fermanagh and South Tyrone and amend the same by substituting

the name of Lieutenant-Colonel Robert George Grosvenor for that of Philip Christopher Clarke as the Member returned for the said constituency.[14]

Before the beginning of the debate, Mr. Speaker gave the following ruling:

> This House is not empowered to re-try a case which has been heard by the petition judges. The procedure in this matter is all laid down in the Representation of the People Act, 1949, an Act that binds the House as well as others whom it may concern, and it provides that the court is to determine if a Member or any other person was duly returned, and to certify the same in writing to the Speaker, and that the determination or certificate shall be final, to all intents and purposes.
>
> The rest of the Section does not concern us. It provides for differences of opinion between judges, of which there seems to have been none here, and Section 124, from which I have quoted, provides in subsection (5) that the House of Commons, on being informed by the Speaker of a certificate, shall order the certificate to be entered in the Journals and give the necessary directions for confirming or altering the Return or issuing a Writ for a new election or for carrying the determination into execution, as the circumstances may require.
>
> So this Act places upon the House the duty at law, on receipt of a certificate, of proceeding to have the Return altered. In this case, I can myself see no relevant matter for debate at all.[15]

He further went on to say:

> The House has no power of its own volition lawfully to over-ride an Act of Parliament. The House of Commons, I suppose like anyone else, can break the law, but if anyone should keep the law of the land it is this House. I would personally urge upon the House that it ought to follow the law which, as recently as 1949, it enacted for these circumstances.[16]

After some discussion upon his ruling, Mr. Speaker reminded the House that in 1911 a similar motion had been moved after the trial of an election petition in Exeter; a private Member had begged to move that no directions be issued by this House to the Clerk of the Crown in the matter of the Exeter election petition. On that occasion Mr. Speaker Lowther had said:

> I cannot accept that as an Amendment to the Motion. The Motion I have just read out follows as a natural consequence upon the report of the judges. Even if the hon. Member were successful in carrying this Amendment, and we were to postpone for a month or two months' consideration of the matter, no power on earth could prevent the hon. Member for Exeter from taking his seat. The decision of the judges is final, and the mere fact that the House declines to alter the writ cannot prevent the hon. Gentleman from taking his seat.[17]

After further discussion, the House divided, and the motion was agreed to by 280 votes to 99, whereupon the Clerk of the Crown attended at the Table and amended the Return accordingly.[18]

Lt.-Colonel Grosvenor then came to the Table to be sworn. Upon a Member objecting that he ought to be accompanied by sponsors,

Mr. Speaker said that by the judges' determination he had been elected at the General Election, and therefore required no sponsors.[19]

Mid-Ulster Election

Proceedings resulting from the General Election.—The two candidates in this election were Mr. T. J. Mitchell (Sinn Fein) (29,737 votes) and Mr. C. Beattie (Ulster Unionist) (29,477 votes). Unlike Lt.-Colonel Grosvenor, Mr. Beattie decided not to petition against the result, but to submit himself anew to the electorate in the hope of obtaining a majority at a by-election. It was accordingly announced in the House of Commons on 7th July by the Leader of the House (Mr. Harry Crookshank) that the time for presenting a petition had expired, and that the House

> is bound to take notice of any legal disabilities affecting its Membership and to see that a writ is issued in the room of a Member adjudged to be incapable of sitting.[20]

He intimated that a Return would be moved for the next day, so that the House might be formally acquainted with the facts constituting the disqualification.

Accordingly, on 8th July, the Parliamentary Under-Secretary of State for the Home Department (Sir Hugh Lucas-Tooth) moved:

> That an Address be presented for a Certificate of Conviction and Sentence of the Assize Court at Belfast on 30th November, 1954, in the case of Thomas J. Mitchell.

The motion was agreed to without a division, Mr. Speaker having intimated that it would be out of order for any Member to object to it or discuss it since it was an unopposed Return, moved by the Minister's own Department, for information to which the House was entitled and which was necessary for its future proceedings.[21]

The Return was presented upon the next sitting day,[22] and consisted of a certificate by the Clerk of the Crown for the County of Tyrone to the effect that Mr. Mitchell had been convicted of three charges of Treason Felony at Belfast on 30th November, 1954, and sentenced on 15th December to ten years' imprisonment on each count.[23]

On 18th July the Attorney-General (Sir Reginald Manningham-Buller) rose to move:

> That Thomas J. Mitchell, returned as a Member for Mid-Ulster, having been adjudged guilty of felony, and sentenced to penal servitude for ten years, and being now imprisoned under such sentence, is incapable of being elected or returned as a Member of this House:
>
> That Mr. Speaker do issue his Warrant to the Clerk of the Crown for Northern Ireland, to make out a New Writ for the electing of a Member to serve in this present Parliament for Mid-Ulster, in the room of Thomas J. Mitchell, adjudged and sentenced as aforesaid.[24]

Before the motion could be moved, Mr. Sydney Silverman (Nelson and Colne), rising to a point of order, suggested that the first part of the motion was out of order, in that the Fermanagh and South Tyrone election petition was pending in the High Court of Northern Ireland, and that, since the ground of the petition was precisely the same as that set forth in the motion, the House, in agreeing to the motion, would be pronouncing upon a matter which was *sub judice*. Mr. Speaker replied:

> I am quite satisfied that the hon. Member's point is misconceived. The case before us to-day is that of Mr. Thomas J. Mitchell and we can proceed on that case with the evidence that is before us. The case which is before the High Court is, of course, *sub judice* and will be decided by the High Court on the evidence relevant to that case which will be produced before it.
>
> We have none of that evidence before us and, therefore, I must rule that that case is entirely a separate one and that we are entitled to proceed upon the case which is mentioned in the Motion. As I say, the High Court dealing with the other case will have before it all the facts that are relevant to that case. We have none of those facts before us. We do not discuss a case which is before the High Court, but we can proceed, as we are entitled to do, to deal with the case of Mr. Mitchell.[25]

A further point of order was raised by Mr. Paget (Northampton) who argued that if the case *sub judice* was successful it would mean that Mr. Mitchell had not been elected but that his opponent had been successful; the House, in carrying the second part of the Motion, would thus be ordering a by-election in a constituency already validly filled. Mr. Speaker replied:

> As I understand from what has been told me about the case that is before the courts, though I have no evidence about that, they are asking for a form of relief which consists in a declaration that the other man was elected. There is no such case before us here at all. We are entitled to take note as a House of Commons of a vacancy in our numbers and to proceed to fill it up. We are entitled to do that. In fact, it is our duty. Therefore, there is no reason why the House should be further detained from considering what the Attorney-General has to say.[26]

In moving his Motion, the Attorney-General informed the House that the disqualification rested on s.2 of the Forfeiture Act, 1870,[27] which provided that a person convicted of treason or felony should lose any office he held, and

> such person shall become, and (until he shall have suffered a punishment to which he has been sentenced . . . or shall receive a free pardon from Her Majesty), shall continue thenceforth incapable of . . . being elected, or sitting, or voting as a member of either House of Parliament . . .

Mr. Mitchell was clearly disqualified under this provision, and it was stated in Erskine May that

> The House is, in fact, bound to take notice of any legal disabilities affecting its Members, and to issue writs in the rooms of Members adjudged to be incapable of sitting . . . In such cases as these, the jurisdiction and duty of the

House cannot be questioned, as the incapacity of a felon is expressly declared by statute.[28]

With regard to the question of how Mr. Mitchell ever came to be nominated at all, in view of his manifest disability, the Attorney-General said that the only grounds on which a returning officer could refuse to accept a nomination paper, as set out in Rule 13(2) of the Parliamentary Elections Rules, which formed part of the Representation of the People Act, 1949, were:

(*a*) that the particulars of the candidate or the persons subscribing the paper are not as required by law; and
(*b*) that the paper is not subscribed as so required.

He added:

I am sure that a moment's consideration will convince hon. Members that it would be quite impracticable to give the returning officer power to decide that a candidate who has been properly nominated is disqualified. Time would not permit of a proper adjudication of that problem. One might find all kinds of difficulties arising. I am sure that the House will agree that one could not leave it to the returning officer to decide on the qualification of the candidate. All that he can decide is whether the nomination paper is in order.

He concluded by saying:

I repeat that by a Petition the seat can be claimed on the ground that the votes cast for the candidate who has secured the majority of the votes are, in fact, votes thrown away. When the time for a petition being lodged has expired, as it has in the case of mid-Ulster, the only course then remaining is to move for the issue of a new Writ.[29]

Mr. Silverman then moved to amend the motion by leaving out from the word "That" in line 1 to the end of the question, and adding:

a Select Committee be appointed to examine into the precedents in the law of Parliament relevant to the return of Mr. Thomas J. Mitchell for Mid-Ulster and to report to the House whether any and what amendments are required:
That no Warrant for a New Writ shall be issued for the said constituency during the present Parliament.[30]

In moving this amendment he drew attention to the anomalous situation which might arise if Mr. Mitchell were re-nominated for the by-election and once more returned. If this were to take place, and the defeated candidate then claimed the seat by petition, he could be—

falsely representing himself to be speaking for the constituency, the constituency having repeatedly declared, by a majority, that whatever else it wanted, it did not want him.

Alternatively, should no such claim be made, he asked whether the present procedure could be repeated. He objected, moreover, that

the Return relating to Mr. Mitchell's conviction was an *ex parte* statement, Mr. Mitchell having declined to open his mouth at his trial, since he did not recognise the jurisdiction of the court.

After a debate lasting for two hours, the amendment was defeated on a division by 197 votes to 63, and the Attorney-General's motion was agreed to.[31]

By-election and Election Petition.—The by-election was held on 11th August, with Mr. Mitchell and Mr. Beattie again standing as candidates; on this occasion Mr. Mitchell polled 30,392 votes and Mr. Beattie 29,586. A Petition to the High Court was accordingly submitted by Mr. Beattie on 25th August.

The case was tried at Omagh, within the constituency concerned, between 5th and 7th October by a court consisting of the same Justices as those who tried Lt.-Colonel Grosvenor's case. The Petition, which was read by the prescribed officer, stated that (*a*) Mr. Mitchell had been convicted at Belfast of Treason Felony on 15th December, 1954, and sentenced to ten years' imprisonment, and under headings (*b*), (*c*), (*d*) and (*e*) made similar allegations to those made under those headings in Lt.-Colonel Grosvenor's Petition (see above). The Petition went on to state that (*f*) Mr. Mitchell had been declared elected at the General Election; (*g*) the House of Commons had declared him incapable and ordered the issue of a new writ, and which proceedings had been made known both by newspapers and by wireless broadcasts; (*h*) the petitioner had sent to every elector, in his election address, a warning that Mr. Mitchell was " a convicted felon and was therefore disqualified ", and that votes cast for him would be null and void; and (*i*) since all votes given for Mr. Mitchell in the by-election were in fact thrown away, the Petitioner had received the majority of the votes cast.[32]

The Petitioner was represented by the same Counsel as had represented Lt.-Colonel Grosvenor at Enniskillen; Mr. Mitchell appeared in person, unrepresented by Counsel.

As regards the state of the law on disqualification, the opening speech of Mr. Jones[33] developed the same arguments and quoted the same cases as he had used in his opening speech for Lt.-Colonel Grosvenor. He gave notice that the evidence which he would call would relate, (1) to formal proof of the service of the Petition, and of Mr. Mitchell's conviction and sentence, (2) to the numerous newspaper utterances which had accompanied every stage of each electoral contest, (3) to the address " H.M. Prison, Crumlin Road " which appeared upon the section of the ballot-paper relating to Mr. Mitchell, (4) to the warning contained in Mr. Beattie's by-election address, and (5) to broadcast utterances on the subject of the by-election.

These matters were all covered in the course of evidence given by eighteen witnesses for the Petitioner.[34]

Mr. Mitchell called no evidence on his own behalf, but confined

himself to addressing the Court.[35] Making no attempt to dispute the legal arguments which had been advanced in favour of his disqualification, he took the success of the Petition for granted, claiming that:

> when the obvious result of these proceedings is announced it will mean in effect that the majority of the people in Mid-Ulster will have been disfranchised.

He proceeded to develop at some length the lines upon which the election had been fought, and its political implications, although checked more than once by both Judges. In conclusion he said:

> Sinn Fein does not recognise this court or any other public court which has been set up for England by pseudo-patriots of the Union. Nothing they can say or do will alter the decision of more than thirty thousand people of Mid-Ulster. When I go out of that door I have no doubt that the Court will have decided that I am no longer an M.P. and that another person will be M.P. in my place, but nevertheless I think it is perfectly obvious to everybody here that nothing this Court can do or say will alter the opinion of thirty thousand people who are living around the Courthouse. . . .
>
> I have no further interest in these proceedings. I hope I have made my position abundantly clear. I think that I shall now depart.

Giving judgment on 7th October, Mr. Justice Sheil developed in greater detail than had Lord Justice Black in his judgment on the Grosvenor Petition the basis of the contention that proof of knowledge of the facts constituting disqualification was all that was necessary to avoid an elector's vote:

> In support of these propositions we need only refer to the judgment of Lord Coleridge, Chief Justice, in the case of *Drinkwater* v. *Deakin*, reported in Law Reports, 9 Common Pleas, at page 626; to the judgments delivered in the English Court of Appeal in the case of *Beresford-Hope* v. *Lady Sandhurst* in 23 Queen's Bench Division at page 79; and to the well-known Irish case of the *County Tipperary* Election Petition, in Irish Reports, 9 Common Law, at page 217. The result is that even if the candidate so disqualified receives a majority of the votes recorded, the candidate next on the poll may on petition be declared elected if he is found to have a majority of votes after deducting the votes so thrown away from the total votes given to the disqualified candidate. The position is clearly set out in the judgment of Lord Coleridge, Chief Justice, in the case of *Beresford-Hope* v. *Lady Sandhurst* at page 94, where he states: "I apprehend that both in *Gosling* v. *Veley* and in *Drinkwater* v. *Deakin*, and in other cases, it has been laid down over and over again, that if the fact exists which creates an incapacity, and it is known, and must be known, to those persons who voted for a candidate who is so incapacitated, votes given under those circumstances are thrown away. As it is put in one of the judgments, such votes are fairly enough thrown away, because the persons would not do the only thing they ought to do to give effect to their votes, namely, to vote for a properly qualified candidate. . . . Where the incapacity is an incapacity of status so annexed by law to the candidate it requires no proof; the fact of its being an incapacity to which the law annexes the legal consequence is known to every person who votes, and the persons who vote and who are aware of the fact to which incapacity is attached, must in reason be held to be aware of the consequence which attaches to their voting."[36]

With regard to the particular circumstances of the case, the learned Judge said:

The evidence relied upon by the Petitioner goes back to the trial of Mr. Mitchell at the Northern Ireland Winter Assizes in December, 1954. The case was one in which eight men from the Republic of Ireland, including Mr. Mitchell, were tried and convicted under the Treason Felony Act, 1848. The offences with which they were charged arose out of a raid upon the Omagh Military Barracks upon the night of the 16th or early morning of the 17th October, 1954. The trial was naturally a matter of considerable public interest, and copies of newspapers circulating in the constituency were put in evidence in which reports of portions of the trial, and especially the observations of the Lord Chief Justice in passing sentence, were conspicuously featured. One would naturally think that the trial was calculated to arouse particular interest in the constituency of Mid-Ulster inasmuch as the barracks—which were the objective of the raid—are situated on the outskirts of Omagh, the county town of Tyrone and principal town within the Mid-Ulster constituency.

Though the raid and the trial and the fact that eight participants in the raid had been sentenced to long terms of imprisonment were matters of great public interest, it might well be that at that stage Mr. Mitchell's name would not stand out as one well known to the public. But at the General Election for the Parliament of the United Kingdom held on the 26th May, 1955, Mr. Mitchell was nominated as a candidate, his opponent being Mr. Beattie. Others of the prisoners convicted and sentenced in connection with the raid were nominated as candidates in other constituencies in Northern Ireland.

It appears that before the Election the Chief Whip of the Unionist Party in the Parliament of Northern Ireland issued a statement warning electors that a number of candidates for constituencies in Northern Ireland were disqualified persons, and stating that a convicted felon serving a term of imprisonment in excess of twelve months was a disqualified person and that votes knowingly given to such a person were lost or thrown away. This statement was reported both in Belfast papers circulating in the constituency and also in local papers which were put in evidence; and, curiously enough, appears to have been more fully set out in the papers which would naturally be read by supporters of Mr. Mitchell. These latter papers carried also a rejoinder by a Mr. Traynor, described as Secretary of the Sinn Fein Executive and candidate for South Antrim, to the effect that Sinn Fein were already aware of the clause in the Representation of the People Act, that the election of a person serving penal servitude could be declared invalid and a new election held; but that as far as they knew there was no legal basis for the statement that if a candidate was unseated the next nearest candidate could be declared elected; and that if another election was held they would contest the seats with the same candidates as before.[37]

Having described the result of the General Election, and the proceedings in the House of Commons on 18th July which have already been mentioned, Mr. Justice Sheil said:

These decisions of the House of Commons obtained wide publicity in the Press of Northern Ireland, and very full reports of the discussions in the House were featured in newspapers circulating in the constituency. The Petitioner's witnesses produced before us a large selection of newspapers, Belfast papers, Dublin papers and locally published papers circulating in Mid-Ulster, carrying reports of the proceedings in Parliament; and we observed that the reports contained in the papers which would normally circulate amongst supporters of Mr. Mitchell were at least as full as those contained in papers which would

normally be read by those favouring Mr. Beattie. There can be no doubt that widespread notice of the decision of the House to declare Mr. Mitchell disqualified was given by the Press throughout the constituency.

In addition, an official of the British Broadcasting Corporation was called as a witness, and produced a copy of the Northern Ireland news bulletin broadcast from the Northern Ireland station of the B.B.C. on the evening of the 18th July, 1955. This bulletin included quite a full synopsis of the discussion that afternoon in the House.

One of the witnesses also deposed that on the same evening he heard the matter included in a news bulletin broadcast by Radio Eireann.

The Speaker of the House of Commons duly issued his warrant directing the issue of a writ for a fresh election. As previously stated, this election was held on the 11th August, 1955, and Mr. Beattie and Mr. Mitchell were again the candidates.

In view of the publicity which Mr. Mitchell's disqualification by the House of Commons had received and, indeed, of the very fact of a fresh election with the same two candidates being held just eleven weeks after the General Election at which Mr. Mitchell had been returned as Member for the constituency, we are satisfied that few, if any, electors in the constituency can have been unaware of Mr. Mitchell's disqualification or of the facts causing that disqualification.

A copy (dated 6th August, 1955) of a newspaper published in the constituency, *The Ulster Herald*, which we were informed enjoyed a substantial circulation and which obviously favoured Mr. Mitchell's candidature, and would presumably be read principally by his supporters, was put in evidence. This paper carried an article bearing a heading five or six columns wide, reading: "Prisoner-Candidate Again Fights Defeated Unionist Nominee"; and the article contained in heavy type the statement: "Mr. Mitchell, who is standing again, is a Sinn Fein candidate and is presently serving a ten-year sentence in Belfast Jail for his part in the armed raid on Omagh Military Barracks in October of last year."

We also had it in evidence that the fact that Mr. Mitchell was serving a ten-year sentence in Belfast Prison for his part in the raid on the Omagh Military Barracks was also mentioned in the news bulletins regarding the by-election broadcast from the Northern Ireland station of the British Broadcasting Corporation on the 25th July, 26th July and 10th August, 1955.

It was also proved to us that the Petitioner's election address at the by-election was sent by post before the election to all the electors on the register. This address, which was printed on a postcard, contained in conspicuous type the following paragraph: "I would draw your attention to the fact that Thomas James Mitchell, who has been nominated as a candidate at this election, is a convicted felon, and therefore disqualified from sitting as a Member of Parliament, and any votes cast for him will be thrown away and will be wholly null and void." As a notice of Mr. Mitchell's disqualification this paragraph is obviously defective. It does not set out fully the facts causing his disqualification. Mr. Mitchell's disqualification did not arise merely because he had been convicted of felony, as the wording of the paragraph suggests, but because he was sentenced to a term of imprisonment in respect of that felony exceeding twelve months and was still undergoing his imprisonment. The paragraph, however, should not be completely ignored, since it would serve to recall, even to electors of short memory, if any there be, the history of the facts leading to Mr. Mitchell's disqualification.

One other fact of significance should be mentioned, namely, that on the ballot paper Mr. Mitchell's address, as taken from his nomination paper, was stated as "H.M. Prison, Belfast".

We are satisfied on the evidence given before us that the facts leading to Mr. Mitchell's disqualification, and indeed the fact that he was by law dis-

qualified, had received such widespread publicity as to cause them to be notorious throughout the constituency, and that on the 11th August, 1955, very few electors indeed could have pretended ignorance of those facts. We therefore determine that the Petitioner, Charles Beattie, was duly elected and ought to have been returned.[38]

Swearing of Mr. Beattie

On 25th October Mr. Speaker informed the House that he had received a Letter and Certificate from the judges appointed to try the Election Petitions relating to the two controverted elections. After a rehearsal of the material facts and dates, the certificate in Mr. Beattie's case concluded:

WE HEREBY CERTIFY that at the conclusion of the said trial we determined as follows:

(*a*) that at the date of the said Election on the 11th day of August, 1955, the said Thomas James Mitchell was incapable of being elected as a Member of Parliament and was not duly elected or returned; and

(*b*) that the said Charles Beattie was duly elected to serve in the present Parliament for the said constituency of Mid-Ulster and ought to have been returned.[39]

The Parliamentary Secretary to the Treasury then moved:

That the Clerk of the Crown do attend this House forthwith with the last Return for Mid-Ulster and amend the same by substituting the name of Charles Beattie for that of Thomas James Mitchell as the Member returned for the said constituency.[40]

The Clerk of the Crown thereupon attended at the Table and amended the Return accordingly,[41] following which, Mr. Beattie was sworn.[42]

Subsequent disqualification of Mr. Beattie

On 1st December the Leader of the House (Mr. Crookshank) informed the House[43] that it had come to notice that Mr. Beattie had been at the time of the by-election in Mid-Ulster a member of the appeal tribunals constituted under the National Insurance (Industrial Injuries) Act, 1946, the National Insurance Act, 1946, and the National Assistance Act, 1948 (all Acts of the Northern Ireland Parliament). Since these appointments might be offices of profit under the Crown, and Mr. Beattie thereby disqualified, the Attorney-General was, in accordance with precedents, reporting the matter to the Select Committee on Elections (see p. 59).

Mr. Silverman, on a point of Order, reminded Mr. Speaker that Mr. Beattie had been admitted a Member of the House on a government Motion, and that Mr. Speaker had ruled that, although the Motion was technically debatable, he could think of no ground upon which it might be rejected. He said:

May I submit that the Government have discovered a ground and that

before the House now permits itself to refer this matter to a Select Committee the House itself might well consider its own procedure in the matter?

Mr. Speaker replied:

I am quite satisfied that what was done on the occasion when the matter was before us was perfectly regular and in order. As to the hon. Member's last point, truth sometimes turns out to be stranger than fiction.

In response to several queries, it was pointed out by Mr. Crookshank that it was not necessary for the House to refer the matter by motion to the Select Committee, since the order of reference of the Committee empowered them

to examine any other cases which may be brought to their notice of Members of this House who may have been incapable of election.

All that was necessary, therefore, was for the Attorney-General to lay the information before the Committee; he himself had only made a statement to the House at this juncture as a matter of courtesy.

Report of Select Committee

The Report of the Select Committee was laid before the House on 15th December,[44] and ordered to be printed.[45] The Report stated:

Mr. Beattie was at the time of both the General Election in May and of the Mid-Ulster by-election in August a member of the Tyrone County Agricultural Committee, of two Local Tribunal panels under the Northern Ireland National Insurance Act, 1946, and the Northern Ireland National Insurance (Industrial Injuries) Act, 1946, and of an Appeal Tribunal under the Northern Ireland National Assistance Act, 1948. He still held these appointments when he appeared before Your Committee on 7th and 8th December.[46]

The Committee had been informed by the Attorney-General that the appointments under the two National Insurance Acts were similar to those held by Mr. Howell (see p. 58), and were offices of profit.

The appointment under the National Assistance Act was less easy to determine: it was an office under the Crown, but whether it was an office of profit depended on the interpretation of the words " allowances (including compensation for loss of remunerative time) " which occur in the Act. After consideration of other relevant cases, the Attorney-General was of the opinion that, as far as Mr. Beattie was concerned, those words constituted his appointment an office of profit. The appointment to the County Agricultural Committee could not, in the Attorney-General's opinion, be regarded as an office of profit, since the words of the statute excluded any payment which could be said to be a profit.[47]

Having stated their opinion that the three appointments held by Mr. Beattie under the National Insurance and National Assistance Acts were Offices of Profit within the meaning of s.24 of the Succession to the Crown Act, 1707, and that Mr. Beattie's election was

therefore invalid, the Committee repeated comments previously made by them (see p. 58), on the misleading nature of letters of appointment which stated that no fees were payable in respect of the offices in question. They expressed the opinion that, so long as the law remained as at present, such letters ought in future to be differently worded and that a covering letter should be sent, where appropriate, drawing attention to the words of the statute and to the opinions of the Law Officers which had been expressed from time to time.[18]

The Committee further recommended:

7. Your Committee recommend that a Bill be brought in to indemnify Mr. Beattie from any consequences of having acted as a Member of Parliament during the period of his service as such, until the Bill receives the Royal Assent. Your Committee's task in deciding whether or not to recommend to the House that Mr. Beattie's election should be statutorily validated was not easy. In law, Mr. Beattie's offence closely parallels several others which they have recently had to consider where validation has been recommended in addition to indemnification. Actually, the offices he held under the National Insurance and National Insurance (Industrial Injuries) Acts corresponded to those held by Mr. Howell. In the present case, however, there are other features. Mr. Beattie came to the House of Commons following a by-election, and as a result of the subsequent decision of an Election Court under the Representation of the People Act, 1949. Nomination day for the by-election, held on 11th August, was 30th July. By that date Your Committee had already considered three disqualification cases since the General Election, and had decided in each case that the election under consideration was invalid. The House of Commons Disqualification Bill, dealing with the subject of disqualification generally, had also been introduced and published on 13th July. Debates had also taken place, on one occasion at some length, on the validating legislation brought before the House.

8. The question of disqualification must have been a prominent issue at the Mid-Ulster by-election, since this by-election was brought about by a declaration of the House of Commons that Mr. Beattie's opponent was incapable of being elected. It was also highly probable that, in the event of a result in this constituency similar to that at the General Election, an Election Petition would be presented. It was, therefore, well within public knowledge that the law relating to disqualification was extremely complicated and far-reaching, and that the performance of a variety of useful public services was liable to be found to be a disqualification for membership of the House. Whilst Your Committee are convinced that Mr. Beattie accepted his offices in complete good faith, they consider, nevertheless, that Mr. Beattie and his advisers should have more carefully examined Mr. Beattie's own appointments.

9. Your Committee accordingly find that, although Mr. Beattie should be indemnified for the consequences of his services as a Member, the circumstances clearly distinguish Mr. Beattie's case from the cases they have previously considered. They therefore recommend that legislation to validate Mr. Beattie's election should not be brought in.

10. Your Committee's attention was drawn, during the course of evidence, to the determination of the Election Court under Section 124 of the Representation of the People Act, 1949, and to the terms of that statute, viz., ". . . the determination so certified shall be final to all intents and purposes". They considered this closely with the assistance of the Attorney-General. They accept his view that a certificate granted under the 1949 Act in the terms of the certificate in this case cannot operate to remove from Mr. Beattie any

disqualification affecting him so as to make him retrospectively qualified for election to this House.

11. Your Committee have been impressed, during their examination of several recent cases, by the complex problems presented not only by the law in its present state, but by the changed and changing circumstances under which public service is now rendered. In the light of the growing body of experience which has arisen during this Parliament, Your Committee consider that these changed circumstances should be fully recognised and dealt with before Parliament parts with the House of Commons Disqualification Bill now under consideration.

On 20th December the Attorney-General informed the House that the Government agreed with the Committee's recommendations, and proposed to take the necessary steps to give effect to them after the Recess.[49]

The Report from the Select Committee was considered by the House on 7th February, 1956.[50] The following motion was moved by the Attorney-General:

That Mr. Beattie, returned as a Member for Mid-Ulster, having at the time of his election held certain offices of profit under the Crown, was incapable of being elected or returned as a Member of this House, and that this House agrees with the recommendations contained in the Second Report from the Select Committee on Elections.

After a debate lasting some two and a half hours, the Motion was agreed to without a division, no amendment having been moved to it.[51]

Mr. Beattie's Indemnification

On 8th February the Prime Minister introduced a Bill,[52] entitled the Charles Beattie Indemnity Bill, whose one effective clause was as follows:

Charles Beattie, Esquire, is hereby discharged, freed and indemnified from all penal consequences whatsoever which he may have incurred by sitting or voting as a member of the Commons House of Parliament at any time before the passing of this Act, while holding the office or place of member of panels constituted for purposes of local tribunals in pursuance of section forty-three of the National Insurance (Industrial Injuries) Act (Northern Ireland), 1946, and of regulations made under section forty of the National Insurance Act (Northern Ireland), 1946, or the office or place of member of an appeal tribunal constituted in pursuance of section twenty-six of the National Assistance Act (Northern Ireland), 1948.

The bill was read a second time and passed through all its remaining stages without amendment on 13th February.[53] No amendment having been made to it by the Lords,[54] it received the Royal Assent on 15th March.[55]

[1] The reports of the two Election Petition trials described in this Article have not been published; the account which follows, and the references pertaining thereto, are based on the Shorthand Writer's Notes furnished in typescript to Mr. Speaker by order of the Court, and laid by Mr. Speaker upon the Table of the House (Votes and Proceedings, 25th October, 1955, pp. 187, 188).

[3] Grosvenor Petition, Day 1, pp. 2-3. [4] *Ibid.*, pp. 3-9. [5] Schofield on Elections, 1st Ed., p. 785. [6] Grosvenor Petition, p. 7. [7] *Drinkwater* v. *Deakin*, L.R. 9 C.P., p. 626; *Beresford-Hope* v. *Lady Sandhurst*, 23 Q.B.D., p. 79; *Tipperary Case*, 3 O'M. and H., pp. 19, 44, 45; *Galway Election Petition, Trench* v. *Nolan*, I.R. 7 C.L., p. 445. [8] Grosvenor Petition, Day 1, pp. 10-59; Day 2, pp. 2-76; Day 3, pp. 2-11. [9] *Ibid.*, Day 3, pp. 12-21. 33-4. [10] *Ibid.*, pp. 13-14. [11] *Ibid.*, pp. 21-32a. [12] Grosvenor Petition Judgment, pp. 2-3. [13] *Ibid.*, pp. 3-6. [14] 545 *Hans.*, c. 41. [15] *Ibid.*, c. 41. [16] *Ibid.*, c. 42. [17] *Ibid.*, c. 43. [18] *Ibid.*, c. 45. [19] *Ibid.*, c. 55. [20] *Ibid.*, cc. 57-8. [21] 543 *Hans.*, c. 1305. [22] *Ibid.*, c. 1479. [23] Votes and Proceedings, 11th July, p. 113. [24] H.C. 32 (1955-56). [25] 544 *Hans.*, c. 38. [26] *Ibid.*, cc. 34-5. [27] *Ibid.*, c. 38. [28] 33 & 34 Vict., c. 23. [29] May, 15th Ed., p. 186. [30] 544 *Hans.*, cc. 38-43. [31] *Ibid.*, c. 43. [32] *Ibid.*, cc. 82-4. [33] Beattie Petition, Day 1, pp. 2-4. [34] *Ibid.*, pp. 5-9. [35] *Ibid.*, pp. 10-79. [36] *Ibid.*, Day 2, pp. 2-8. [37] Beattie Petition Judgment, p. 3. [38] *Ibid.*, p. 4. [39] *Ibid.*, pp. 5-6. [40] 545 *Hans.*, c. 56. [41] *Ibid.*, c. 56. [42] *Ibid.*, c. 57. [43] *Ibid.*, c. 58. [44] 546 *Hans.*, cc. 2515-20. [45] Votes and Proceedings, 15th December, p. 308. [46] H.C. 145 (1955-56). [47] *Ibid.*, para. 2. [48] *Ibid.*, para. 3. [49] *Ibid.*, para. 6. [50] 547 *Hans.*, c. 1857-8. [51] 548 *Hans.*, c. 1508 (Daily edition). [52] *Ibid.*, cc. 1508-52. [53] Votes and Proceedings, 8th February, 1956, p. 366. [54] *Ibid.*, 13th February, p. 374. [55] *Ibid.*, 22nd February, p. 398. [56] *Ibid.*, 15th March, p. 453; 4 & 5 Eliz. 2, c. 27.

VIII. CANADA: REVISION OF THE HOUSE OF COMMONS STANDING ORDERS

Appointment and Report of the Special Committee

On 14th January, 1955, the Prime Minister (Rt. Hon. L. S. St. Laurent) moved:

> That a select committee to be designated be appointed to consider with Mr. Speaker the procedure of this house for the purpose of suggesting any changes that may be desirable to assure the more expeditious dispatch of public business, with power to send for persons and papers, and to report from time to time its findings and recommendations to the house.[1]

In moving the motion, he reminded the House that a similar committee had been set up in the previous Session, at the end of which, after a number of meetings, they had reported recommending the appointment of a further Committee at an early date in the new Session.[2] After a short debate, Mr. St. Laurent's motion was agreed to.[3] The Committee was accordingly nominated on 17th January.[4]

On 14th June the Special Committee's Report was presented to the House by Mr. Speaker (Hon. L. René Beaudoin, Q.C.),[5] who summarised its main provisions and drew attention to the fact that it was unanimous. Thereafter the Minister of Finance (Hon. W. E. Harris), who had also been a member of the Committee, moved

That the second report of the special committee appointed to consider with Mr. Speaker the procedure of this house, presented this day, be now referred to the committee of the whole for consideration at the next sitting of the house,

which motion was agreed to without debate.[6]

Recommendations of the Report

The Report, which is 67 pages long, was arranged in the following form. On the right-hand pages were set out the existing texts of all the standing orders which it was proposed to amend, together with a short commentary on the objects of the amendment; on the left-hand pages opposite were set out the texts of the corresponding standing orders in their amended form. At the conclusion of the Report it was stated that the changes, if agreed to, would involve the re-numbering and re-grouping of the standing orders and the revision of the chapter headings. In the description which follows, the standing orders are normally referred to by the new numbering adopted after the House had agreed to the Report; where necessary to avoid ambiguity, both old and new numbers are given.

Apart from the proposed amendments of substance which are set out hereunder, the Report contained a large number of drafting, consolidating and clarifying arrangements, of which no mention need be made.

Sittings of the House

An amendment to standing order 2 provided for a morning sitting on Fridays throughout the session, and for morning sittings during the debate on the Address in reply to His Excellency's speech, except on the traditional leaders' day and on Wednesdays when the House will meet at 2.30 o'clock p.m.

An amendment to standing order 6 provided for an intermission from 1.00 p.m. to 2.30 p.m. on any day upon which a morning sitting was held and for the ordinary adjournment of the House at 6.00 p.m. or 10.00 p.m., as the case might be. A new Clause (4) would permit of the continuation of proceedings on certain debates and motions beyond the ordinary daily hour of adjournment.

Business of the House

Standing order 15, which sets out the routine of business, was amended in several respects:

> *Government notices of motions.*—So that the "orders of the day" might be reached and called at an early hour on government days, a change was proposed in the procedure in respect of government notices of motions. In future these notices were to be called during routine proceedings but, under the terms of

the new standing order 21, debatable motions would be automatically transferred to and ordered for consideration under "government orders" in the same or at the next sitting of the House.

Private Members' Day.—It was proposed that a fixed number of Mondays and Thursdays be set aside as private members' days. In addition to the six Mondays provided for in this amendment, two Thursdays also would be available for private members.

Senate amendments to public bills.—Formerly the consideration of Senate amendments to public bills introduced by private Members had been confined to Monday (Private Members' Day), and after that day was taken over for government business, such amendments could not be taken up unless provided for by a special order. It was proposed that Senate amendments to private Members' public bills should come up for consideration under "Public bills and orders" in the same manner as Senate amendments to government bills now came under "Government orders", and amendments to private bills under "Private bills".

Notices of motions for the production of papers.—Formerly this heading had been carried on the order paper by virtue of the old standing order 51 (re-numbered 47 under the present revision), and in the motion which provided for the taking over of private members' days for government business, provision had been made for the calling of the heading on certain days. Since private members' days would now be fixed by standing order, the inclusion of this heading in the amended standing order removed the necessity of making a special order in this regard from time to time. The heading would continue to be called on Mondays and Wednesdays, and, in some cases, on Thursdays when that day was a private Members' day.

Government Days.—In future, any Monday not allotted to private Members would be a government day. Wednesday was also fixed as a Government Day.

Private Members' Days.—In addition to the six Mondays provided for private Members, it was proposed that two Thursdays be fixed for the same business.

The Committee observed that the practice in regard to private members' business was not consistent. Under the existing standing order 15(4) (the deletion of which was recommended), bills were dropped to the bottom of the list after being debated on a Tuesday or a Friday, but under the existing standing order 110(2) (to be renumbered 54(2)) a private bill considered in a committee of the whole on the said days remained at the top of the list for consideration at the next sitting.

In order that a uniform principle might be established, it was proposed in a new standing order 20(2) that after any bill, motion or order in the name of a private member had been considered at any sitting, it should be placed at the foot of the list of bills or orders under its respective heading on the order paper.

A new standing order 21 proposed a procedure whereby debatable government notices of motions, to be called in future during the ordinary daily routine of business, should be transferred to government orders and thereby allow the House to proceed to "orders of the day" at an early hour on government days.

It was also proposed that when a debatable government notice of motion was called by Mr. Speaker, the Minister in whose name it stands should respond by saying, "government order", and thereupon it would be forthwith transferred to government orders and considered in the same or at the next sitting of the House.

The Committee recommended that the existing Standing Order 23 (Commons public bills amended by the Senate) should be deleted. In the past, when Mondays were taken up as government days, it had been impossible, unless a special order were made, to consider Senate amendments to a public bill standing in the name of a private Member. Since the heading "Senate amendments to public bills" was to be deleted from "Monday (Private Members' Day)" in standing order 15(3), as amended (see above), the said amendments would now take precedence under "public bills and orders" in pursuance of the new standing order 20(1)(e). This procedure would be the same as that which obtained in respect of amendments to both government and private bills.

Rules of Debate

Since copies of the *Votes and Proceedings* of the House are printed and distributed daily to members and officers of the Senate, the Committee considered that the provisions of the existing standing order 30, which provided for the searching of the Commons Journals by the Senate, were obsolete, and recommended its deletion.

An amendment to standing order 33 (formerly 39) proposed to advance by one hour the operation of closure proceedings to correspond with the recent one hour advancement of the daily adjournment.

Address in Reply to His Excellency's Speech

A new standing order 38 limited the amount of time which might be spent on the debate on the motion for an address in reply to His Excellency's speech, and any amendments proposed thereto, to ten days, with set periods for the disposal of amendments and subamendments on the sixth and ninth days.

Questions

The change proposed in the amendments to standing order 39, which dealt with the procedure dealing with questions, was summarised in the Report as follows:

All questions shall be printed on the daily order paper until answered or otherwise disposed of;

Questions shall be listed under two headings, namely:

1. "Starred Questions"; that is, questions distinguished by asterisks, to indicate that oral answers thereto are required.
2. "Questions"; that is, questions to which written replies may be given.

"Starred Questions" shall be called on Wednesdays, at which time Mr. Speaker shall call the question number and also the name of the Member who has submitted the "Starred Question", and the Minister or Member to whom the question is directed may give an oral reply thereto.

On other days "Starred Questions" shall be printed in the daily "order paper" and the section containing the same shall follow the last order of business for the respective day as set forth in standing order 15(3).

Questions for which written replies are requested shall be printed daily in a section of the "order paper" headed "Questions," and this section shall be the last section of the daily "order paper".

Answers to unstarred questions may be deposited with a Clerk at the Table of the House at any time before the expiry of the first hour of a daily sitting, and the answers so deposited shall be printed in *Hansard* of the same day. In order to ensure that the printing routine of *Hansard* be not interrupted, answers to questions deposited after the first hour of a daily sitting shall be held over until the next sitting.

When it is desired to have any starred questions passed as an "order for return", or to have any such questions stand as a "notice of motion", a Minister will so indicate when the said question is called on a Wednesday.

When it is desired to have any unstarred question passed as an "order for return", or to have any such question stand as a "notice of motion", a Minister will so indicate at the close of the starred question period on Wednesdays.

Reports and Returns

A new standing order 40 provided a procedure whereby returns, annual departmental reports and other papers which are presented to or laid before the House from time to time might be deposited on any sitting day with the Clerk of the House and thereby eliminate the formal presentation of such returns, reports, etc., during a sitting of the House.

Clause 2 of this order authorised the Clerk of the House to record the tabling of such returns in the *Votes and Proceedings* for the day on which such returns, etc., were deposited with him.

Deputy Speaker

To allow for the election of a Deputy Speaker at the outset of the first session in a new Parliament, the words "as soon as an Address has been agreed to in answer to His Excellency's Speech" were deleted from section (1) of standing order 52.

Supply and Ways and Means

A new standing order 56 provided for a minimum of six motions to go into committee of supply, with a two-day allowance for debate on each of the said six motions, and continued the former provision whereby a motion must always be made on certain days in order to put the House into committee of supply on the main estimates. It also provided for the adding of Wednesdays to the days on which the House went into committee of supply without question put.

In clause (2) it was provided that the order for supply should be the first order of the day on a Monday when it was taken for the first six times in a session in order to put the House into committee of supply on the main estimates.

Clause (3) provided for the appointment of certain Mondays for the consideration of the order for supply.

Clause (4) (a) provided for an allowance of two days for each debate. In clause (4) (b) it was provided that any unused portion of a two-day allowance might be added to the next or any subsequent one of the first six motions to go into supply. Unused time should begin from the moment Mr. Speaker leaves the Chair for the House to go into Committee of Supply. Clause (4) (c) provided for the continuing of unfinished debates on a Wednesday, Thursday or a Friday, if the government thought it desirable to do so. Clause (4) (d) provided for the disposal of amendments at a specified hour. Clause (4) (e) provided for a second motion if the first motion to go into Supply is amended. Clause (4) (f) provided for the disposal of the main motion at a specified hour.

Clause (5) provided for the calling forthwith of the estimates of a specified number of departments on each of the first six occasions on which the House went into Supply.

In clause (6) it was provided that when the House went into committee of Supply to consider interim supply or supplementary estimates, no motion should be made.

A new standing order 57 provided a non-debatable routine procedure for the reference of estimates to standing or special committees.

A new standing order 58 provided a fixed number of days for proceedings on the budget debate. In clause (1) it was provided that the motion "That Mr. Speaker do now leave the Chair" for the House to go into committee of ways and means, should be made on one occasion only; clause (2) provided eight days for the said proceedings; in clause (3) it was provided that the said order should be the first order of the day; clause (4) provided for the disposal of the sub-amendment; clause (5) provided for the disposal of the main amendment; and clause (6) related to the concluding stage of the said debate.

An amendment to standing order 59 (formerly 58) placed a thirty-minute limitation on speeches in any committee of the whole.

Special Committees

Under the terms of the existing standing order 65 (to be re-numbered 67), notice was required of a motion to make a substitution in the membership of a special committee. This provision had been observed on one occasion only in recent years. It was proposed, therefore, that the requirement of notice for substitutions should be repealed.

It was also proposed that section 2 of the order, which provided "that no member who declares or decides against the principle of a bill, resolution, or matter to be committed, can be nominated of such committee", should be deleted on the ground that its provisions were antiquated.

Public Bills

The existing standing order 77 contemplated a procedure whereby a bill reported with amendment from a committee of the whole could be debated and further amended before being ordered for a third reading. Formerly, a motion was made that the bill be now taken into consideration, but this procedure had not been employed for many years. Since, under modern practice, amendments to a bill are made only in standing or special committees or in committees of the whole House, it was recommended that the standing order be amended to conform with the now well-established practice; as amended, it is re-numbered 78 (2).

Private Bills

Under the terms of the existing standing orders 92 and 93 (re-numbered 93 and 94), petitions for private bills could not be presented to the House when it was in recess during the sixth calendar week of any session and, to overcome that difficulty, special orders of the House had been made to extend the period for the presentation of such petitions.

Amendments were accordingly proposed in order to delete the word "presented" where it appeared therein, and substitute therefor the word "filed". Under these standing orders, as amended, any petition filed with the Clerk of the House within the first six weeks of a session could be received by the House without penalty being incurred.

Other Proposals

The Committee also made certain recommendations regarding practice, which did not involve the specific amendment of standing orders; for example, that reports from standing and special committees should not be read by the Clerk Assistant unless Members when presenting them stated that they intended to move for concurrence on the same day, and that the Clerk of the House should be authorised

to institute a descriptive and consecutive numbering system for questions, motions for returns and addresses.

After their remarks concerning the re-numbering of the orders (see above), the Committee concluded by recommending that the proposals contained in the report should be put into effect at the next session of Parliament.

Consideration of the Report by the House

The House went into committee of the whole in order to consider the Report on 1st July.[7] After some debate progress was reported,[8] and the committee resumed again on 12th July.[9] At the conclusion of the debate on that day, the Report was read the second time and agreed to, without any amendment.[10] The Standing Orders were subsequently reprinted.

[1] 97 *Can. Com. Hans.*, p. 181. [2] 96 *Can. Com. Hans.*, p. 6739; V. & P., 1954, p. 822. [3] 97 *Can. Com. Hans.*, p. 184. [4] *Ibid.*, p. 230.
[5] *Ibid.*, p. 4750. [6] *Ibid.*, p. 4751. [7] *Ibid.*, p. 5559. [8] *Ibid.*, p. 5572.
[9] *Ibid.*, p. 5982. [10] *Ibid.*, p. 6003.

IX. AUSTRALIAN COMMONWEALTH: THE CASE OF THE "BANKSTOWN OBSERVER"

By J. A. Pettifer,
Third Clerk-Assistant and Serjeant-at-Arms of the House of Representatives

Complaint

On Tuesday, 3rd May, 1955, the hon. Member for Reid, New South Wales (Mr. C. A. A. Morgan) raised a matter of Privilege that an article published on Thursday, 28th April, in a weekly newspaper known as the *Bankstown Observer*, circulating in his electorate, impugned his personal honour as a member of Parliament and was a direct attack on his integrity and conduct as a Member of the House. Upon the motion of the hon. Member, the House, without debate, referred the newspaper article to the Privileges Committee for investigation and report.[1]

The newspaper article, which the Member described as "merely a rehash of a scurrilous, illegal and anonymous pamphlet which was distributed clandestinely throughout my electorate a few days prior to the 1946 General Election", alleged that the Member "is, or was, mixed up in what can only be described as an Immigration Racket",

Proceedings of Committee

Mr. Morgan was called before the Committee of Privileges on 17th May. He was examined and gave evidence in relation to the charges made against him by the newspaper, and, at the same time, tendered to the Committee copies of the subsequent issues of the newspaper which contained its attack upon him.

On the 26th May the Committee submitted to the House a Special Report asking for authority to consider the subsequent articles in addition to that which formed the Committee's original reference.[3] The House agreed to this request on the 31st May.[3]

Mr. Raymond Edward Fitzpatrick, proprietor of the *Bankstown Observer* and Mr. Frank Courtney Browne, Journalist, were called before the Committee for examination and to give evidence on the 7th June.

Initially Mr. Fitzpatrick refused to be sworn, claiming that he doubted the Committee's power to administer an oath, and he also made application to be represented by counsel. The Committee agreed to hear counsel on the following two points:

(i) As to his right to appear generally for Mr. Fitzpatrick, and
(ii) As to the power of the Committee to administer an oath to the witness.

After hearing counsel on these matters, the Committee, acting in accordance with the practice of the House of Commons, declined to allow the witness to be so represented. The Committee also ruled that it had the necessary power, derived from the Parliamentary Witnesses' Oaths Act, 1871, of Great Britain and preserved to the House of Representatives under Section 49 of the Constitution, to administer an oath to witnesses.

Mr. Fitzpatrick, as proprietor of the *Bankstown Observer*, declared that he assumed full responsibility for everything that the paper printed, whether it was libellous or not. However, the evidence revealed that Mr. Fitzpatrick had employed Mr. Browne as editor and author of the articles concerning the hon. Member, at a fee of £30 per week for the express purpose of attacking Mr. Morgan, that he had implicit trust in whatever he wrote and that he left the writing of the articles to Mr. Browne. In these circumstances the Committee felt that guilt should lie both with the proprietor and editor of the paper.

Recommendations of the Committee

The Privileges Committee submitted its report to the House on the 8th June.[4] It found—

(1) that Messrs. Fitzpatrick and Browne were guilty of a serious breach of Privilege by publishing articles intended to influence and intimidate a Member (the hon. Member for Reid), in his conduct in

the House, and in deliberately attempting to impute corrupt conduct as a Member against him, for the express purpose of discrediting and silencing him. The Committee recommended that the House should take appropriate action.

(2) that there was no evidence of improper conduct by the hon. Member in his capacity as a Member of the House, and

(3) that some of the references to the Parliament and the Privileges Committee contained in the newspaper articles constituted a Contempt of the Parliament. However, the Committee considered the House would best consult its own dignity by taking no action in this regard.

Evidence

The Committee did not table the evidence given before it. However, to support its findings certain extracts from the evidence, which showed the deliberate intent of the newspaper to silence the Member, were published in the Report and these extracts are quoted:

MR. JOSKE (questioning Mr. Fitzpatrick).—Mr. Morgan then stated: "I regard it as a brazen attempt to intimidate me in the course of my public duties on behalf of the people whom I represent."

What do you say about that?

MR. FITZPATRICK.—That was our idea in printing it.

MR. JOSKE.—To prevent him saying things in Parliament?

MR. FATZPATRICK.—Yes.

MR. JOSKE.—Mr. Morgan then said: "No doubt it has been caused by fear about disclosures that will be made in the near future as a result of inquiries that have been set in train."

What is your comment on that?

MR. FITZPATRICK.—That is the burning of the *Torch*.

MR. JOSKE.—You agree that that is the true reason why it was published?

MR. FITZPATRICK.—Yes, that is so.

. . . . . .

MR. SWARTZ.—In answer to Mr. Joske, you said that the idea in printing the original article in the *Bankstown Observer* of the 28th April was to prevent Mr. Morgan saying things in the Federal Parliament?

MR. FITZPATRICK.—Yes.

MR. SWARTZ.—You still agree that that is a reasonable interpretation of what you said?

MR. FITZPATRICK.—Yes, we had to hit back. We were taking it all the time.

MR. JOSKE.—Then Mr. Morgan continued: "The article is merely a re-hash of a scurrilous, illegal and anonymous pamphlet which was distributed clandestinely throughout my electorate a few days prior to the 1946 General Election."

Let us take that piecemeal. Is it a re-hash of the pamphlet or is it substantially the same as the pamphlet?

MR. FITZPATRICK.—Yes.

MR. JOSKE.—Would you agree that the pamphlet was a scurrilous one? I am not asking you whether it was true but whether it was scurrilous, which means would it affect a man's reputation very seriously?

MR. FITZPATRICK.—I think that was the idea why it was put out.

. . . . . .

MR. GALVIN.—You admit that from reading this article in this paper on the 28th you would infer that Morgan was engaged in a racket on immigration at the present time?

MR. FITZPATRICK.—Yes.

. . . . . .

MR. W. M. BOURKE.—You did not know the way in which he (Browne) was going to "have a go" at Mr. Morgan?

MR. FITZPATRICK.—No, I told him to get stuck into him. That is what I employed him for.

. . . . . .

MR. JOSKE.—When you wrote on the 28th April that Mr. Morgan is, or was, mixed up in what can only be described as an immigration racket, did you mean to indicate that he might still, on the 28th April, be mixed up in it?

MR. BROWNE.—I do not generally plead guilty to loose writing, but that was a piece of particularly loose writing. Charges were being made currently, as I mentioned, by his political enemies.

. . . . . .

MR. JOSKE.—Has he (Morgan) not the right not to be defamed?

MR. BROWNE.—As much as anybody else.

MR. JOSKE.—Answer that "Yes" or "No".

MR. BROWNE.—I won't answer it "Yes" or "No", and there is no reason why I should.

MR. FREETH.—You come back at him (Morgan) that he made his representations at £20 a time—that he made these representations as a Member?

MR. BROWNE.—I suggest that is the inference that could be taken from it.

MR. FREETH.—I want to draw your attention again to the fact that your first article did infer that it could apply to the present. Is that so?

MR. BROWNE.—Yes.

MR. FREETH.—Referring again to the article of 5th May. I ask you again, do you think this paragraph I will read to you also gives that inference? "The charges against Morgan are that he made his representations at £20 per time, a form of activity that wouldn't appeal to most of his fellow Members."

MR. BROWNE.—Yes, I think it could.

Proceedings in House

On the 9th June the Report was considered by the House and agreed to, upon the motion of the Prime Minister (the Rt. Hon. R. G. Menzies).[5] Upon the further motion of the Prime Minister it was resolved that Messrs. Fitzpatrick and Browne be notified that at 10.0 a.m. the following day the House would hear them at the Bar before proceeding to decide what action it would take in respect of their breaches of Privilege.

Shortly after 10 a.m. on 10th June, Mr. Fitzpatrick was brought to the Bar of the House and the following proceedings took place.[6]

MR. SPEAKER.—The House has adjudged you guilty of a serious breach of Privilege by publishing articles intended to influence and intimidate a Member, the honorable Member for Reid, in his conduct in the House, and in deliberately attempting to impute corrupt conduct as a Member against the honorable Member for Reid, for the express purpose of discrediting and silencing him.

Have you anything to say in extenuation of your offence before the House determines what action it will take?

MR. FITZPATRICK.—I would like to apply for permission for Mr. Mason, my counsel, to act on my behalf.

MR. SPEAKER.—The resolution of the House entitles you to speak personally, not your counsel.

MR. FITZPATRICK.—I would like to apologise to the House for what I did. When the article was published in the newspaper I had no idea that it was against parliamentary privilege. I humbly apologise.

Mr. Fitzpatrick withdrew and Mr. Browne was brought before the Bar.

Mr. Speaker repeated the words which had been addressed to Mr. Fitzpatrick; thereupon Mr. Browne addressed the House at some length.[7]

The Prime Minister asked that the sitting of the House be suspended so that the addresses could be taken into account. Fifty-one minutes later the House resumed and the Prime Minister moved the following motions:[8]

That Raymond Edward Fitzpatrick, being guilty of a serious breach of Privilege, be for his offence committed to the custody of the person for the time being performing the duties of Chief Commissioner of Police at Canberra in the Australian Capital Territory or to the custody of the keeper of the gaol at such place as Mr. Speaker from time to time directs and that he be kept in custody until the 10th day of September, 1955, or until earlier prorogation or dissolution, unless this House shall sooner order his discharge.

That Mr. Speaker direct John Athol Pettifer, Esquire, the Serjeant-at-Arms, with the assistance of such Peace Officers of the Commonwealth as he requires, to take the said Raymond Edward Fitzpatrick into custody in order to his being committed to and kept in custody as provided by this resolution.

That Mr. Speaker issue his warrants accordingly.

Similar motions were moved in regard to Mr. Browne.

The Leader of the Opposition (the Rt. Hon. H. V. Evatt) moved, as an amendment, that the motions be amended to read:

That this House is of opinion that the appropriate action to be taken in these cases is the imposition of substantial fines and that the amount of such fines and the procedure of enforcing them be determined by the House forthwith.[9]

The matter of the penalty to be imposed upon the two offenders was the subject of considerable debate. The Prime Minister, in moving the two motions, had declared, "A fine is not within our power". He amplified this point of view in a press statement issued on 13th June:

I should add that the power of the House to impose a fine is extremely doubtful, having been denied by several leading constitutional authorities. As the Constitution points out, the powers are those of the House of Commons. The House of Commons has not imposed a fine for breach of privilege since 1666, but has invariably proceeded, either by committal to custody or by reprimand, in appropriate cases.

After debate[10] lasting throughout the remainder of the morning and most of the afternoon, the amendment of the Leader of the Opposition

was defeated on division and the motions of the Prime Minister were agreed to, upon Division.

Committal

Upon the direction of Mr. Speaker, the Serjeant-at-Arms brought the offenders (separately) to the Bar of the House where each was informed of the terms of the Resolution agreed to by the House and the Serjeant was directed to take each man into custody; the necessary Warrants having been issued by Mr. Speaker in accordance with the Resolutions.

Legal proceedings following Committal

During the evening of the committal day, the solicitors for the offenders approached in Chambers the Judge of the Australian Capital Territory Supreme Court to issue a Writ of habeas corpus. The Judge then issued a Summons on the police officers to whose custody the offenders had been committed to show cause why the Writ should not issue and set the hearing down for the following Wednesday, 15th June. On that day, counsel for the respondent, with the general concurrence of the opposing counsel, proposed in Court that, in view of the important constitutional issue and the great public interest, the Court should act under a provision of the Australian Capital Territory Supreme Court Act which enables it to direct that a case be heard before the full High Court. The Court did so order and the High Court heard the argument on June 22nd to 24th, delivering its judgment on the latter day.

The Commonwealth Parliament derives its power to deal with breaches of parliamentary privilege from Section 49 of the Constitution, which reads:

> The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

No action has been taken by the Parliament to declare its powers, privileges and immunities in accordance with that Section.

The whole of the hearing before the High Court was occupied by legal argument as to whether the Court had the power to hear an appeal against the action of the House of Representatives and whether Parliament in its action had exceeded its Constitutional power.

Counsel for Fitzpatrick and Browne argued that if the Court held that Parliament had exceeded its authority the Court could then proceed to hear the facts of the case leading to the gaoling of the two men to determine whether they were guilty of the breach of privilege alleged against them.

The Chief Justice in his judgment dealt firstly with the question whether the warrants issued by Mr. Speaker were a sufficient return to the writs of habeas corpus.

He held that such warrants if issued in England by the Speaker of the House of Commons would have constituted sufficient answer, being drawn up in accordance with the law there which was finally established in the case of the *Sheriff of Middlesex* in 1840.[11] In Australia the law was established authoritatively by the decisions of the Privy Council in *Dill* v. *Murphy* in 1864,[12] and in the *Speaker of the Legislative Assembly of Victoria* v. *Glass*, 1871.[13]

Stated briefly, that law provides that

> it is for the Courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise. The judgment of the House is expressed by its resolution and by the warrant of the Speaker. If the warrant specifies the ground of the commitment the Court may, it would seem, determine whether it is sufficient in law as a ground to amount to a breach of Privilege, but if the warrant is upon its face consistent with a breach of an acknowledged privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms.

The warrants issued by Mr. Speaker stated the contempt or breach of privilege in general terms and not in particular terms but accorded with the law, as each stated that the person concerned had been guilty of a serious breach of privilege, recited the Resolution of the House to that effect and stated the terms of committal.

Having established that it was not necessary to go behind the warrant, it remained for the Court to determine whether the law previously stated was applicable to the Commonwealth through Section 49 of the Constitution.

Arguments advanced by counsel for Fitzpatrick and Browne urging a restrictive construction or modified meaning of the words of Section 49 were, broadly,

(1) that the Constitution of Australia is a rigid Federal Constitution and it is the duty of the Courts to consider whether any act done in pursuance of the power given by the Constitution, whether by the Legislature or Executive, is beyond the power assigned to that body by the Constitution.

(2) that the Constitution adopted the theory of the separation of powers and that the power of committal by warrant belonged to the judicial power and ought not to be conceded upon the words of Section 49 to either House of the Parliament.

(3) that the power contained in Section 49 was a transitional power which ceased when Parliament declared some of its powers, privileges and immunities in two statutes—the Parliamentary Papers Act, 1908-46, and the Parliamentary Proceedings Broadcasting Act, 1946.

(4) that the powers under Section 49 are contingent upon the

Houses exercising their authority under Section 50 which provides that each House might make rules and orders with respect to (i) the mode in which its powers, privileges and immunities might be exercised and upheld and (ii) the order and conduct of its business and proceedings.

All these arguments the Court rejected and held that Section 49 gave the House of Representatives the same powers as the United Kingdom House of Commons to charge, convict and sentence a person for breach of privilege.

The offenders petitioned the Judicial Committee of the Privy Council for special leave to appeal against the decision of the High Court. However, the decision of the Privy Council was that the judgment of the Chief Justice of Australia was unimpeachable and leave to appeal was refused.[14]

Sir Hartley Shawcross, Q.C., appeared as counsel for the petitioners, and there is interest in the following views which he submitted to the Privy Council:

> My Lords, there were serious complaints that the proceedings in the Australian Committee of Privileges were contrary to the principles of natural justice, but I have had to advise my clients that these are matters which could not properly be canvassed here. The short point involved in this matter before your Lordships is whether the committal by the Australian House of Representatives for punishment did not involve the exercise of judicial powers not vested in them under their Constitution. It follows from that that serious questions as to the liberty of the subject and the demarcation of powers between, on the one hand the legislature and on the other hand the judiciary, are involved.
>
> I concede at once that if this was an English case, if I were appearing here for people who had been committed to the Tower on the warrant of the Speaker of the House of Commons—as a matter of fact Parliament in this country has not asserted that power in practice for a long time—the Court could not enquire into the authority of the warrant or go behind it.

Press Reaction to Imprisonment

This case of breach of Privilege and the resulting committal of the offenders created immense public interest and the press devoted considerable space to all aspects.

Broadly, the criticism was that the offenders were committed without a fair trial in accordance with the normal British judicial methods. In particular the main points of comment were that—

(i) No specific charge was made against the offenders—they were called merely as witnesses before the Committee.

(ii) The hearing was not in open Court. The Committee has a discretionary power regarding the admission of strangers during the hearing of evidence. On this occasion (and in accordance with usual practice) strangers were excluded.

(iii) Legal representation was not allowed the offenders before the Committee and before the House.

(iv) The offenders were given no right to confront or cross-examine their accusers.

(v) So far as the House of Representatives was concerned, the accused had no right of appeal.

Other viewpoints expressed by the press in its criticism were—

That the Parliament, by invoking what the press termed "these ancient and outmoded sanctions of privilege" and applying them so harshly, risked making martyrs of the two persons and did itself a disservice in the public esteem.

That the perpetrators of the offence were unaware of the penalties they might be incurring because no precedent or precise rules existed.

That the verdict was reached and the penalty fixed (by majority vote) in an end-of-the-session atmosphere of haste utterly unsuited to the importance of the matter.

That the House should have had access to the whole of the evidence, and not merely to selected portions of it, before it made up its mind.

That the committal should not have been for a fixed period but for the "pleasure of the House" as is the later Commons' practice.

Freedom of the Press

The fears of the press that the privileges and immunities of Parliament might be inconsistent with, or a threat to, the freedom of the Press, were answered by the Prime Minister as follows:[15]

> The simple historic fact is that the modern protection of the freedom of Parliament and the equally modern freedom of the press have gone hand in hand. One cannot exist adequately without the other. Parliament makes no challenge to the right of newspapers or citizens to criticize Members of Parliament, closely or even bitterly. We are in a position to be attacked, and to accept as well as to use free speech. No Parliament seeks to restrain such freedom.
>
> But the case is different when an attempt is made to *prevent* free speech on the part of a people's representative in Parliament. No reputable newspaper either demands or expects the right to silence a Member of Parliament speaking in his place in the House.

Review of Privilege Procedures

On the 13th June, 1955, the Prime Minister expressed his readiness to promote the "fullest consideration" of a review of the machinery for declaring and enforcing Parliamentary Privilege, and that he would promote it in co-operation with the Opposition during the next session of the Parliament. However, no move along these lines had been made at the end of the Twenty-first Parliament (4th November, 1955).

Move to Release Prisoners

On the 31st August, following the resumption of the Parliament

after an adjournment, the Member for Eden-Monaro (Mr. A. D. Fraser) moved—

That Messrs. Frank Browne and Raymond Fitzpatrick be released forthwith from their commitment into custody.[16]

The Leader of the Opposition, Dr. Evatt, moved that the motion be amended so as to read—

That this House, having considered the procedures adopted in the cases of Messrs. Frank Browne and Raymond Fitzpatrick, is of opinion that a special committee of the House, representing all parties, should be appointed immediately to examine and report on the procedures which should be adopted to ensure that established principles of justice shall be applied in every case where punitive action is proposed or contemplated.

This amendment was ruled out of order as not relevant to Mr. Fraser's motion.[17]

After a debate[18] lasting most of the afternoon the motion to release them was defeated by 62 votes to 3.

Custody of Prisoners

The offenders were transferred from the custody of the Serjeant-at-Arms to the custody of the Acting Chief Commissioner of Police, Canberra, on the day of their committal, 10th June, 1955. The Acting Chief Commissioner retained the prisoners in the police cells at Canberra until the 18th July. On that day, acting under a further warrant issued by Mr. Speaker, the Serjeant-at-Arms again took the prisoners into his custody for the purpose of transferring them to the custody of the keeper of the gaol at Goulburn in whose charge they remained, by authority of an additional warrant issued by Mr. Speaker, until their term of imprisonment had expired on the 10th September.

[1] *Hans.*, pp. 352-5. [2] *Ibid.*, pp. 1114-7. Report not printed.
[3] *Ibid.*, p. 1239. [4] Report of Committee of Privileges, H. of R. paper No. 2, Session 1954-55. [5] *Hans.*, pp. 1613-7. [6] V. & P., pp. 269-71; *Hans.*, p. 1625. [7] *Hans.*, pp. 1625-7. [8] *Ibid.*, pp. 1627-30.
[9] *Ibid.*, pp. 1630-4. [10] *Ibid.*, pp. 1625-64. [11] 11 A. & E., 273.
[12] 1 M.P.C. (New Series), 487. [13] L.R. 3 P.C., 560. [14] Petition heard and decision given, 14th July, 1955. [15] Press statement, 13th June, 1955.
[16] *Hans.*, p. 207. [17] *Ibid.*, pp. 214-7. [18] *Ibid.*, pp. 207-30.

X. AUSTRALIAN HOUSE OF REPRESENTATIVES: SOME FEATURES OF 1955 SITTINGS

By A. A. Tregear, B.Com., A.I.C.A.,
Clerk of the House of Representatives

The 1955 sittings of the Australian House of Representatives were marked by a number of undignified scenes and by many situations of difficulty for the Presiding Officer, not only in the Chair, but also in his administrative capacity. These circumstances resulted very largely from divergent views on policy which had arisen within the Opposition (Labour) Party which culminated in the announcement in the House, on the first sitting day of the year, that seven members had formed themselves into a new party.[1] By the full use of Parliamentary tactics, members of this "corner" party frequently embarrassed their former political colleagues; it became commonplace (the House never having adopted any procedure for the automatic adjournment of its sittings) for unduly long debates on the adjournment of the House to be used as the vehicle for charges and recriminations. The application of the closure was often necessary to bring the sitting to an end. During one of these acrimonious debates four members were named and suspended,[2] and, on a subsequent occasion, for the first time in the history of the Commonwealth Parliament, the Deputy Speaker adjourned the sitting owing to disorder.[3] Some months earlier, during a debate on foreign affairs, the Speaker also had found it necessary for the same reason to suspend the sitting until the next day.[4]

During the year five members were suspended, one of whom was subsequently suspended for a second time, and four were ordered by the Chair to withdraw from the Chamber. Earlier controversy which had occurred on the presence of suspended members within the Parliamentary building was finally resolved when the House decided

> That, in the view of this House, suspension from the service of the House involves exclusion from the Chamber and its immediate surroundings but does not involve deprivation of the other amenities of the building.[5]

A feature of the procedural moves adopted by the two Opposition parties was the unusually large number of matters of urgent public importance which were submitted for discussion, twenty-one matters being submitted by the main Opposition party and nineteen by the corner party. On six occasions more than one matter was submitted on the same day and the Speaker, in accordance with the Standing Order,[6] selected the matter which in his opinion was the most urgent and important. On three of these occasions attempts were made to challenge the selection of the Speaker by proposing motions of dissent

from his decisions. In each case, however, the Speaker disallowed the motion, stating that in making his selection he had not given a ruling but had exercised his authority pursuant to the Standing Order which contained no provision for canvassing the opinion of the Chair.[7] Twice the same matter was submitted on the same day by a member of each of the two parties; and twice the matter submitted failed to secure the necessary support of eight members as required by the Standing Order.[8] When a previously unsupported matter was again submitted for discussion the Deputy Speaker ruled that the proposal was out of order.[9]

Some indication of the difficult rôle of the Chair in the circumstances may be gauged from the fact that motions dissenting from rulings of the Chair were moved on eight occasions and one motion of want of confidence in the Speaker was also moved.[10] On the other hand the House twice took the somewhat unusual course of agreeing to substantive motions supporting the Speaker, firstly approving an administrative act in connection with the allocation of office accommodation within the building,[11] and, secondly, endorsing his action on a matter in relation to the call.[12]

The life of the House of Representatives, the constitutional maximum of which is three years, prematurely expired after fifteen months when the Governor-General, on the advice of the Prime Minister, dissolved the House on the 4th November, 1955. The Prime Minister explained to the House[13] that, since the double dissolution of both Houses in 1951, the elections for each House had occurred separately and that the action taken by him was intended to synchronise once more the elections for the two Houses. A feature of the General Election which followed[14] was the total elimination from the House of Representatives of members of the corner party.

[1] *Hans.*, 19/4/55, p. 3. [2] V. & P., 1954-55, pp. 175-7; *Hans.*, 27/4/55, pp. 218-23. [3] V. & P., 1954-55, p. 351; *Hans.*, 13/10/55, p. 1650. [4] V. & P., 1954-55, p. 184; *Hans.*, 3/5/55, p. 362. [5] V. & P., 1954-55, p. 180; *Hans.*, 28/4/55, pp. 230-1. [6] S.O. No. 106A. [7] V. & P., 1954-55, pp. 221, 265, 359; *Hans.*, 24/5/55, pp. 985-90; 9/6/55, pp. 1578-81; 20/10/55, pp. 1732-3. [8] V. & P., 1954-55, pp. 356, 365; *Hans.*, 19/10/55, pp. 1669-70; 25/10/55, p. 1835. [9] V. & P., 1954-55, p. 371; *Hans.*, 26/10/55, p. 1902. [10] V. & P., 1954-55, pp. 193-4; *Hans.*, 10/5/55, pp. 543-62. [11] V. & P., 1954-55, pp. 181-2; *Hans.*, 28/4/55, pp. 257-69. [12] V. & P., 1954-55, pp. 185-7; *Hans.*, 4/5/55, pp. 373-96. [13] *Hans.*, 26/10/55, pp. 1895-6. [14] General Election held on 10/12/55.

XI. CENTENARY OF RESPONSIBLE GOVERNMENT IN NEW SOUTH WALES, AUSTRALIA, 22nd MAY, 1956

By Brigadier J. R. Stevenson, C.B.E., D.S.O., E.D.,
Clerk of the Parliaments

New South Wales celebrated one hundred years of responsible government on 22nd May, 1956, and this may be a suitable occasion to consider the historical evolution of our system of parliamentary government, which was obtained without civil war or rebellion.

Present Constitution

The Constitution Act of 1902 sets out, in section 3, "the Legislature means His Majesty the King with the advice and consent of the Legislative Council and Legislative Assembly", and it is interesting to note that there is no statutory definition of "Parliament". In the original (1853) Bill proposed by Wentworth, the first clause was drafted to read: "There shall be in the place of the Legislative Council now subsisting, a Parliament consisting of one Legislative Council and one Legislative Assembly." The authors amended it, on review, by omitting the words "a Parliament consisting of", but the brevet notes in the margin referring to Parliament were, by inadvertence, not removed, and remained (although of no legal recognition) even after review by the House of Commons.

The powers are sovereign and, originally delegated by the United Kingdom Parliament, are limited by certain definite fields of legislation which were ceded to the Commonwealth Parliament (New South Wales retaining what is known as the residual powers). Section 5 of the Constitution Act reads: "The Legislature shall subject to the provisions of the Commonwealth of Australia Constitution Act have power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever."

Legislative Council

The Legislative Council consists of sixty Members elected under a proportional system by Members of both Houses for a term of twelve years (fifteen Members retiring every three years). The franchise is set out in the Constitution (Legislative Council Elections) Act, 1932-37. (Nominations are required to be signed by two Members of the Council or Assembly.)

The powers of the Council are limited by section 5A of the Constitution Act, which provides that if the Assembly passes a Bill appropriating revenue for the ordinary annual services of the Government

and the Council rejects it or fails to pass it within one month, the Bill may be presented to the Governor for the Royal Assent. All Bills imposing a new rate, tax or impost are required to be originated in the Assembly. Members of the Council receive an annual allowance of £500.

Legislative Assembly

The Legislative Assembly comprises ninety-four Members, each representing one electorate in New South Wales, Members being elected under a preferential system. The franchise and method of election are provided for in the Parliamentary Electorates and Elections Act, 1912-50. Nominations for elections which are required to be signed by not less than six electors, must be accompanied by a deposit of £25, which is returned if a candidate polls more than one-fifth of the first preference votes of the successful candidate. Members are elected for a period of three years, but may have to face the electors sooner if a dissolution is granted by the Governor on the recommendation of the Premier. An allowance of £1,875 a year, with a Stamp Allowance of £96 and a Travel Allowance of £100, is made to Members of the Assembly.

The powers of the Assembly are limited by section 46 of the Constitution Act, which provides that any Bill for appropriation of any part of the Consolidated Revenue Fund or any other tax must be first recommended by the Governor.

Executive Council and Cabinet

The Leader of the party enjoying the support of the majority of Members in the Assembly is sworn in by the Governor as the Premier. A number of colleagues are elected by Caucus, in the case of the Labour Party, and the Premier allots the portfolios for Ministerial duties; with the Liberal and Country Parties, the leader selects his colleagues.

After they have been sworn in, they, together with the Governor, form the Executive Council; without the Governor and under the chairmanship of the Premier they form the Cabinet.

The Cabinet decides policy and implements administrative action through the Ministers in charge of departments, whilst the Executive Council formally approves or ratifies administrative acts. To-day, the word "Governor" in Acts means the Governor with the advice of the Executive Council, as set out in section 15(2) of the Interpretation Act.

Members of the Executive Council in New South Wales are not required by statute to be Members of Parliament; at the present time there are sixteen Members—fourteen in the Assembly and two in the Council.

The Early Legislative Councils

Originally the Governor administered the law, subject to directions from the Privy Council in England, which were issued to him in his Commission and by Despatches.

In 1823 a British Act of Parliament established a Legislative Council as an advisory body to the Governor. The Members were nominated by the Governor and numbered "not more than seven nor less than five" (4 Geo. IV cap. 96), the same Act providing for the separation of Van Diemen's Land (Tasmania). Five Members were appointed.

An Act (9 Geo. IV cap. 83) was passed on the 25th July, 1828, providing for an increase in the number of Members to "not exceeding fifteen nor less than ten". This Act contained an important provision, altering the power of veto of the Chief Justice, who had previously decided the validity of all laws and ordinances *before* submission to the Council. Henceforth, all laws *after passing* were to be submitted within seven days to the Judges of the Supreme Court.

Oath of Secrecy Removed

The Oath of Secrecy, which Members were required to take under the former Act, was not included, on the grounds set out in the Despatch of Sir George Murray to Governor Darling, dated 31st July, 1828: "It has been thought in this case that the disadvantages of secrecy were not compensated by the benefit derived from it. A law is then most properly framed and most likely to be followed by prompt and cheerful obedience when the feelings and even the prejudices of the People are to a certain degree consulted in its formation; and the public discussions, which precede, and in some measure direct, the enactment of laws in a free country, at once prevent many practical errors and facilitate the execution even of unpopular statutes."

This action of allowing public debate was followed, in 1832, by the reporting in the Press of details of the debate, and the public were admitted to the debates in 1838, under rules approved by the Secretary for State on 5th November, 1838.

By 5 and 6 Vic. cap. 76, passed in July, 1842, the Council was to consist of thirty-six Members, twelve being appointed by the Crown and twenty-four elected. Qualification of Members depended on a freehold in lands and tenements in New South Wales of a yearly value of £100 or of the value of £2,000. Electors' qualification required a freehold of £200 in district or house-holder with an annual value of £20.

Provision was made for the election of a Speaker to preside at meetings, in place of the Governor.

Up to this date a number of residents considered the Governor had too much power and the officials nominated by him to the Council

usually supported him in any division. Certain residents pressed for further representation of the people. The Reform Acts passed in England gave a certain impetus to the movement, but the group supporting it were divided. Dr. Dunmore Lang pressed for an extension of the franchise, whilst Wentworth pressed for it with limitations on a property qualification. One argument used at that time was, that the majority of the residents were not of sufficient maturity to govern themselves; further, that as a large number were or had been convicts they did not possess a sense of responsibility. Another group desired a Republic.

13 and 14 Vic. cap. 59 was passed in August, 1850, providing for the establishment of Victoria as a separate colony. This Act was proclaimed in January, 1851, and took effect with the issue of writs for the Victorian Legislative Council on 1st July, 1851. The New South Wales Legislative Council was increased to fifty-four Members and granted power to draw up a Constitution.

The Bi-Cameral System

With the discovery of gold, and the consequent flood of immigrants, in 1851, further impetus was given to the demand for representative government. A Declaration and Remonstrance against the new Constitution Act (13 and 14 Vic. cap. 59), addressed to the Secretary of State for the Colonies, was introduced in the Council by Wentworth. It was against the power of veto of the Minister over local legislation; that the sole appropriation of revenue was not placed in the local legislature; withholding of customs revenue; administration of waste lands and the revenue therefrom. This declaration was adopted by the Council on a division—Ayes 18, Noes 8. Of the 8 "Noes", 6 were from official appointees.

In May, 1853, a Select Committee was appointed to draft a Constitution; Wentworth was Chairman of this Committee. In the report, the Committee stated that "they desired to have a form of Government based on the analogies of the British Constitution" and so incorporated a bi-cameral system, in the Bill.

In regard to the Legislative Council, the Committee reported the object was to place "a safe, revising, deliberative and conservative element between the Lower House and Her Majesty's Representative".

Wentworth proposed a system of hereditary titles, with a right of summons to the Council for a number of Members, the remainder being nominated, based on the Province of Quebec Act (31 Geo. III, cap. 31). Others suggested as elected House, based on the South African system (at that time as yet untried).

A compromise was reached on a nominee system, the first appointments being for five years; thereafter, the appointments were for a life tenure.

A minimum number of twenty-one Members was fixed (thirty-six

were summoned in the first instance) but the maximum number was not set down. This was a device that provided for the resolution of a "deadlock" between the two Houses. The Government of the day (commanding a majority in the Assembly) could advise the Governor to appoint additional Members to the Council to ensure the passage of certain legislation—a process called "swamping", which has been used on a number of occasions in New South Wales.

In 1934 the Council was reconstituted, after a referendum, and is now fixed at sixty Members, with provision, in the case of a deadlock between the two Houses, for the question to be submitted to the people.

Democracy apparently had a different meaning to that which we understand to-day, for the Committee reports that "they have no wish to sow the seeds of a future democracy". After Eureka Stockade, Peter Lalor is reported to have said: "What do these gentlemen mean by Democracy? Chartism, Communism, or Republicanism? If so, I'll have none of it."

The Legislative Assembly was to comprise fifty-four Members, with an electoral franchise of a salary of £100 a year and occupants of any room paying £40 a year for board and lodging or £10 a year for lodging only. The Members were to be re-elected every five years.

A clause was inserted giving power to the Legislature to amend the Constitution on a two-thirds majority in both Houses. This clause was removed later and the Constitution amended in 1858 introducing voting by ballot and substituting for the property qualification a residential qualification. In 1893 plural voting was removed on the principle "one man one vote", whilst in 1902 the franchise was extended to include women. Compulsory voting was introduced in 1928.

Deas Thomson and Wentworth sponsored the Bill through the House of Commons and the House of Lords. It was considered that the local legislature had exceeded its power in its proposal, so a second Bill was passed to enable the Queen to assent to the original Bill. In due course both Bills were assented to and the new Constitution was proclaimed on the 24th November, 1855, which date some people consider is of equal importance to us as the 4th of July is to the people of America.

The Despatch of Lord John Russell of 20th July, 1855, transmitting the Constitution Act, alludes in paragraph 20 to "leaving local questions to be dealt with by the Local Legislature", and, in the concluding paragraph, states, ". . . It has been a source of deep satisfaction to Her Majesty's Government and all classes in the Mother Country to mark the practical evidence which has been afforded by their Australian fellow-subjects and foremost amongst them by the people of New South Wales, of their deep sympathy with her fortunes throughout the arduous struggle in which she is now en-

gaged. And, at the same time, the Colonists of New South Wales by their avowed desire to assimilate their institutions as far as possible to those of the Parent Country have proved that this sympathy was not merely the expression of a common sentiment arising from a common origin but connected with a deliberate attachment to the ancient laws of the community from which their own has sprung. . . ."

The First Ministry

A Select Committee was appointed in October, 1855, to report on Changes in the Administration. It considered the question of pensions payable to office holders and the appointment of responsible Ministers to departments.

The Committee reported that it considered there should be, apart from the law officers, Attorney-General and Solicitor-General, not less than four—

1. Chief Secretary and Premier.
2. Secretary for Finance.
3. Secretary for Interior.
4. Secretary for Public Works.

It suggested that the Premier should have under his direction the offices of Colonial Secretary, Colonial Treasurer and Surveyor-General, thus controlling waste lands of the Crown, trade and commerce, revenue and expenditure.

The Secretary for Finance was likened to the Chancellor of the Exchequer in England, and was to be responsible for "Ways and Means", including taxation, taking over the departments of Auditor-General, Customs, and the Mint and the Public Bank of Issue when established.

The Secretary for the Interior was to be charged with administering Police and Gaols, Post Office, Administration of Justice and the supervision of educational and municipal institutions similar to the Principal Secretary of State for Home Affairs in England.

The Secretary for Public Works would be responsible for roads, railways, public buildings, docks, harbours and fortifications.

The report further recommended that the Attorney-General and Solicitor-General should be members of the Ministry and that the President of the Legislative Council be constituted the "highest judicial functionary", making his office analogous to the Lord High Chancellor of England.

Sir William Denison considered that, on taking the oaths as Governor under the new Constitution, on 19th December, 1855, the old Executive Council was *de facto* dissolved.

The difficulty confronting the Governor was to select certain Ministers who could command a majority in the Assembly.

On 21st January, 1856, E. Deas Thomson was requested to form

a Ministry, but Donaldson and Plunkett refused to join him, the latter expressing the view that the new Ministry should not have any of the old Members in it. Donaldson was also asked to form a Government, but encountered difficulties and suggested to the Governor that a Ministry could not be formed until the results of the elections were known.

At this stage, the Governor submitted to the Judges of the Supreme Court the question of pensions payable to the old officials under the Constitution Act—requiring a definition of "political grounds"—and in view of their advice on the 8th February, 1856, the old Executive Council resumed office. The Writs for the elections were issued on 10th March and the elections terminated on 19th April.

On 18th April, the Governor commissioned Deas Thomson to form a Government, but again Plunkett, Donaldson and Parker refused to accept office, and, on 20th April, he advised His Excellency accordingly, and Donaldson was commissioned to form a Ministry, and on the 25th April submitted the following names to the Governor:

Colonial Secretary	... ...	S. A. Donaldson
Colonial Treasurer	... ...	James Macarthur
Attorney-General	... ...	W. M. Manning
Solicitor-General	... ...	J. B. Darvall
Auditor-General	... ...	G. R. Nichols

They were appointed on the 28th April.

Although they were to be sworn in at once, the Governor asked Deas Thomson, who resigned on 28th April from the Executive Council, to continue his duties as Official Secretary until the House met, which he did, relinquishing the duties on 6th June, 1856.

With the addition of Thomas Holt (in place of James Macarthur), who accepted the office of Colonial Treasurer, Members of the Executive Council assumed office on 6th June, and, with the exception of W. M. Manning (who held office under the old Constitution) resigned from the Assembly to re-contest their seats—a requirement under the new Constitution.

It would appear that some confusion existed between 28th April and 6th June. The question may well be posed: On what date did Responsible Government commence? On 28th April, 22nd May, 6th June, 1856, the date of Proclamation (24th November, 1855), or the date the Governor took the Oath of Office under the new Constitution—19th December, 1855?

Macarthur states, in his resignation: "We deferred to take upon ourselves departmental duties or the salaries of office, and we entered merely upon what may be termed the political functions and responsibilities."

Deas Thomson stated in his Opening Speech to Parliament: "I am desirous to explain the reasons which have induced me to avail myself of the services of the gentlemen at present forming the Ex-

ecutive Council . . . It became the duty of the Governor prior to a meeting of the Legislature to summon to the Legislative Council such persons as the Governor and the Executive Council should think fit. . . . I have not however placed these gentlemen in charge of any of the departments of the Government because their seats in the Assembly would thereby have become vacant, and as there was no power to issue new writs for their respective districts until after the meeting of Parliament."

Apparently the Governor was not satisfied with the division of responsibility of the Administration and requested the views of Deas Thomson, which he submitted on 2nd July. The recommendations were for a Cabinet of six Ministers and five departments. The Ministers were to be:

1. Principal Secretary to the Government and Premier.
2. Attorney-General.
3. Solicitor-General.
4. Minister for Finance and Trade.
5. Minister for Public Instruction.
6. Minister for Crown Lands and Public Works.

The Attorney-General and Solicitor-General were to act conjointly in the administration of Justice. It was also proposed that the office of Auditor-General should be independent of the Government.

In looking back over one hundred years of Responsible Government, considering its achievements, the strife of political life and the development of the State, one might well consider the opening words of the Governor's Speech to Parliament on 23rd May, 1856:

> It is with no ordinary feelings of satisfaction that I address you for the first time, as the Legislature constituted under the provisions of an enactment framed for the purpose of adopting, so far as circumstances will permit, the principles characteristic of the British Constitution, and I trust that this form of Government will be found congenial with the habits and feelings and conducive to the happiness and prosperity of the people of New South Wales.

XII. OPENING OF NEW CHAMBER OF THE LEGISLATIVE COUNCIL FOR THE NORTHERN TERRITORY OF AUSTRALIA

By D. R. M. Thompson,
Clerk of the Legislative Council

On Friday, 25th March, 1955, the Legislative Council for the Northern Territory of Australia became possessed of a new and permanent Chamber and offices.

Since the inauguration of the Council in 1948 it had met in the Temporary Supreme Court and buildings which have now passed to

the Navy. The Chamber and ancillary offices are also part of the new administrative headquarters of the Northern Territory Administration, which is a branch of the Commonwealth Department of Territories under the Minister for Territories (The Hon. P. M. C. Hasluck, M.P.).

The new buildings are constructed on the site of the former Darwin Post Office and Eastern Extension Telegraph (Cable) Company's offices, which were destroyed by Japanese bombs in 1942 and in which ten Commonwealth Public Servants lost their lives. Some of the remaining walls were used for the new buildings, and indeed one part of a wall has been left untouched to remind us of the past.

The occasion of the opening of the new Chamber was deemed so important that Their Excellencies, the Governor-General, Field-Marshal Sir William Slim, G.C.B., G.C.M.G., G.C.V.O., G.B.E., D.S.O., M.C., and Lady Slim honoured the Council by their presence at the first meeting held in the Chamber. To do this, they had to fly from Canberra some 2,000 miles distant. The Commonwealth Parliament sent a delegation headed by the President of the Senate (Senator the Hon. A. M. McMullin) and the Speaker of the House of Representatives (The Hon. A. G. Cameron), who were accompanied by the Acting Clerk of the Senate and the Clerk-Assistant of the House of Representatives.

In the morning, in the presence of a large and representative gathering of guests, The Hon. P. M. C. Hasluck, M.P., unveiled a plaque recording that the former buildings had been destroyed by enemy action with loss of life and that:

> The buildings are dedicated to the use of the Legislative Council for the Northern Territory and as offices of the Government in the faith that work of lasting good will here be done in Service to the people and form an enduring memorial of past devotion and a continuing witness through the Ages that Patriotism shall ever rise more brightly from the ashes.

He then turned the key and declared the new Chamber officially "open". The Chamber is oblong in shape, measuring 53 feet 6 inches (excluding the President's Gallery) by 40 feet and 15 feet high. The President's Chair is on a dais raised by two steps one foot above floor level. The President's Gallery is at the end of the Chamber opposite to the President. Above it is the Strangers' and Press Gallery. The furniture is of contemporary design, Members being seated two to a desk with separate chairs. The chairs have a fixed frame with seagrass back and seat and wooden arm rests. The Clerk's desk extends each side of and in front of the President's desk, with a raised centre portion for the Chairman of Committees. The Chamber, which is ventilated by adjustable louvres (floor fans are used in the hotter months), is painted throughout in light pastel shades appropriate to the climate. The concrete floor is covered by 3/16 inch rubber strips in marbled green with contrasting border. Offices

are set apart for the President, Elected Members of the Council, Hansard Staff and Records Room. When the Council is not sitting, these offices are used by Administration staff.

In the afternoon His Excellency the Governor-General was pleased to deliver what in wholly elected parliaments would be the "Governor-General's Speech".[1] On arrival, he inspected a Guard of Honour, and there was a fly-past of Canberra bombers with precision timing. At the conclusion of His Excellency's speech, a salute was fired by the Medium Coast Battery. A Resolution of thanks to His Excellency was passed by the Council[2] and later a fitting copy was transmitted to Government House, Canberra.

After the departure of Their Excellencies, the Commonwealth Parliament delegation, led by Mr. President and Mr. Speaker and Clerks wigged and gowned, were announced by the Clerk of the Legislative Council, and invited to enter by the President of the Council (The Hon. F. J. S. Wise).

The Delegation through its leaders then presented to the Legislative Council a Presidential Chair, a replica of the Senate President's Chair. The Senate Chair, incidentally, is one given to the Commonwealth Parliament by the Canadian Government, so there exists a link, however tenuous, between this Council and the Canadian Parliament.

The Council agreed to a Resolution of Thanks to the Commonwealth Parliament for this magnificent gift, and this was later transmitted to both Houses of the Parliament, in appropriate form.[3]

The ceremonies of the day were executed practically without a blemish, and this was in great part due to Mr. A. G. Turner, Clerk-Assistant of the House of Representatives, who came up a few days earlier to advise and guide us. The then President of the Council (The Hon. F. J. S. Wise) worked himself almost to exhaustion in ensuring that the arrangements were complete and all-embracing, and the result must have been extraordinarily satisfying to him.

[1] N.T. *Hans.*, 5th Council, 1st Sess., No. 1, pp. 2-7. [2] *Ibid.*, pp. 8-9.
[3] *Ibid.*, pp. 9-12.

XIII. THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA AND NEW GUINEA

By D. I. McAlpin,
Clerk of the Legislative Council for the Territory of Papua and New Guinea

The Territory of Papua and New Guinea comprises two territories, the Territory of Papua and the Territory of New Guinea.

The Territory of Papua was, until 1902, the Possession of British New Guinea and, in that year, was placed under the authority of the

Commonwealth of Australia. By the Papua Act, 1905, the Commonwealth accepted the Territory and, *inter alia*, provided for the establishment of a Legislative Council. In 1942, when civil government was suspended, the council consisted of the Administrator, the official members (not more than nine, nor less than five) of the Executive Council and five non-official members nominated by the Administrator and appointed by the Governor-General.

The Territory of New Guinea was formerly German New Guinea and was occupied by Australian military forces in September, 1914. From 1920 the Territory was administered by the Commonwealth under mandate to the League of Nations. The New Guinea Act, 1932, provided for the establishment of a Legislative Council consisting of the Administrator, the official members of the Executive Council (eight in number) and seven non-official members nominated by the Administrator and appointed by the Governor-General.

Following the invasion of the island by the Japanese, civil government of both Territories was suspended on 14th February, 1942, and was not re-established until 30th October, 1945.

Since civil government was resumed the Territory of New Guinea has been administered in accordance with a Trusteeship Agreement entered into by the Commonwealth and the General Assembly of the United Nations. At that time too, whilst maintaining the identity and status of each Territory, the Territory of Papua and the Territory of New Guinea were formed into an administrative union.

From 1945 until November, 1951, legislative power was vested in the Governor-General of the Commonwealth. The Papua and New Guinea Act, 1949, provided for the establishment of a Legislative Council consisting of the Administrator, sixteen official members and twelve non-official members. It is worthy of note that the non-official members include, for the first time, three elected and three native members. In the election of members franchise is restricted, *inter alia*, to persons who are not aliens or natives. Of the other six non-official members three represent the interests of the Christian Missions in the Territory and the other three are selected from no particular group.

The Papua and New Guinea Act provides that the Administrator shall preside at all meetings of the Council at which he is present ("the Administrator" is defined as including an Acting Administrator). In the absence of the Administrator the senior official member of the Council who is present presides. The presiding member has a vote and a casting vote.

The Territory of Papua and New Guinea is not self-governing. In the case of the Territory of New Guinea, Article 2 of the Trusteeship Agreement designates Australia as the sole authority which shall exercise the administration of the Territory. It follows, therefore, that the Commonwealth Parliament must retain ultimate control of the Territory's legislative processes. Parliament has delegated to the

Legislative Council the power to make legislation, but Ordinances dealing with specified matters must be reserved for the assent of the Governor-General, whilst any Ordinances assented to by the Administrator may be disallowed by the Governor-General within six months of such assent. In addition, all Ordinances, after assent, must be laid before Parliament.

The Legislative Council was inaugurated on 26th November, 1951, the first elections having been held on 10th November, 1951. In all, the Council has met on twelve occasions involving sixty-five sitting days. Indications are that the Council will settle to a routine of three meetings per year each of approximately one week's duration. A heavy programme lies ahead for, apart from the legislative needs of a young and developing country, there is the task of revising and amalgamating the laws of the two Territories.

XIV. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1955

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

Limitation of speech.—Sub-section (1) of the new S.O. No. 63[1] provides that when Mr. Speaker is in the Chair speeches may not exceed forty minutes except in the case of—

(*a*) the Prime Minister and the Leader of the Opposition; and
(*b*) Ministers and members in charge of bills or motions and one Minister or member, as the case may be, speaking in reply.

It should be emphasised that the additional exceptions to the forty minutes' limitation were specifically introduced so as to exclude any extension of time being granted by unopposed motion when a member had taken up his full forty minutes.

The following interpretations of the new rule were given by Mr. Speaker during the session in private rulings, viz.:

(*a*) The Prime Minister and the Leader of the Opposition may avail themselves of the extension of time privilege under paragraph (1) (*a*) at any time during a debate, and by so doing they will not deprive one other Minister or member, as the case may be, of the privilege of speaking in reply for longer than forty minutes under paragraph (1) (*b*).
(*b*) One Minister or member, as the case may be, to whom the privilege of speaking in reply for longer than forty minutes is to be accorded under paragraph (1) (*b*), may likewise avail

himself of it at any time during a debate provided that his name has been given to Mr. Speaker by the respective Party Whip before such Minister or member rises to address the Chair.

The privilege of speaking in reply for longer than forty minutes under paragraph (1) (*b*) was accorded during the session—

(i) to a Minister when seconding a Government amendment to an Opposition member's motion;
(ii) to an Opposition member when seconding an Opposition amendment to a Minister's motion; and
(iii) to a Minister who on behalf of the Government replied to a private member's motion moved by a Government member.[2]

Scope of debate on Third Reading of Bill.—On 7th February Mr. Speaker drew attention to the provisions of the new S.O. No. 181 which provides that—

> On the Third Reading of a Bill (other than an appropriation Bill) the debate thereon shall be confined to its contents and no amendments which raise matters not included in its provisions may be offered.

He then made the following remarks, viz.:

> From the very nature of its terms the rule was obviously intended to have a narrow and restrictive effect . . . the rule was designed to prevent a repetition at the Third Reading of the same arguments that were adduced at the Second Reading.
>
> At the Second Reading the general principles of the Bill are discussed and accepted, and the debate is governed by the rule of relevancy, which is interpreted widely to allow the subject matter of the Bill to be approached from every angle and fully analysed. At the Committee Stage the Bill is dealt with clause by clause and only the details are under consideration. At the Report Stage the House reconsiders the amendments made in Committee.
>
> It is clear, therefore, that, as stated in May's 15th Edition (page 504), " the purpose of the Third Reading is to review a bill in its final form after the shaping it has received in the earlier stages " and that " debate is confined strictly to the contents of a bill, and cannot wander afield as on Second Reading ". Only such matters as are included in the provisions of the Bill can be raised, and the discussion must be strictly relevant to and directly connected with those provisions.[3]

Programme of Government business.—It has already been recorded[4] that the Committee on Standing Rules and Orders had recommended the adoption of the practice that the Leader of the House once every week before the commencement of public business makes a statement for the purpose of informing the House what items of Government business (and in what order of precedence) it is intended to take on Government days during the whole of the following week.

On the first Friday after the commencement of the session the Minister of Lands, as acting Leader of the House, accordingly made a statement on the Government business to be taken during the fol-

lowing week. He added, however, that it must be well understood that the programme could not necessarily always be rigidly adhered to under all circumstances and that the Government must always retain the right to alter the programme as it might from time to time think fit. A statement on Government business was thereafter made every week throughout the session.[5]

Consolidation measures.—The new S.O. No. 186, which came into force on 1st January, 1955, provides that if a Select Committee reports that a bill is purely consolidating, such bill may be taken through its remaining stages without amendment or debate.

During the session two consolidation measures, viz. the Customs Bill and the Criminal Procedure Bill, were introduced and passed through all stages without any amendment or debate.

When the Criminal Procedure Bill had been read a Second Time the House, by unopposed motion, resolved that the Bill be not committed to Committee of the Whole House and that the Third Reading be taken forthwith.[6]

Reading extracts from newspapers on Budget Statement.—While S.O. No. 61 prohibits the reading of extracts from newspapers referring to debates in the House during the same session, Mr. Speaker, during the Budget debate, allowed a member to read extracts from newspapers dealing with the actual proposals contained in the Budget statement of the Minister of Finance.[7]

Motion that Chairman report Bill cannot be divided upon.—During the Committee Stage of the Senate Bill the point was raised whether it was competent to call for a division on the motion "That the Chairman report the Bill with amendments".

In a private ruling Mr. Speaker held that as it was in the nature of a procedural motion which was required to be made to enable the Chairman to report the Bill to the House after its consideration in Committee and as S.O. No. 177 laid down that "a bill having been fully considered the Chairman *shall* be directed to report the same to this House", such a motion was not debatable and a division could not be demanded upon it.[8]

Rule of anticipation: Proposal having greater legislative effect not blocked.—On 1st February, when leave had just been given for the introduction of a Bill to provide for State-controlled lotteries, Mr. Speaker drew attention to a notice of motion on the Order Paper dealing with a State lottery, and remarked that as preference must be given to proposals having the greater legislative effect, a Bill could not be blocked by a motion. He accordingly ordered that the motion be discharged from the Order Paper.[9]

Rule of anticipation: Motion discharged.—When the Minister of Transport gave notice of a motion to go into Committee of Supply on the Estimates of Expenditure from the Railway and Harbour Fund, the Order for the adjourned debate on a motion on railways, harbours and airways was discharged on an unopposed motion by the

mover (Mr. P. B. Bekker), as debate on the motion to go into Committee of Supply might to some extent have been blocked by the private member's motion on the Order Paper.[10]

Amendment outside scope of motion.—In a private ruling Mr. Speaker held that, on the motion for constructing a dam in the Caledon River to supply the city of Bloemfontein and the Orange Free State, an amendment calling for an inquiry into the water supplies of the whole of the Union would go beyond the scope of the motion and was therefore out of order. (An amendment proposing to carry out a survey of the requirements of the Orange Free State was allowed.)[11]

Amendment irrelevant and subject referred to Select Committee for inquiry.—In a private ruling Mr. Speaker held that, on a motion on the establishment of a contributory pension scheme to replace disability grants and war veterans' and blind persons' pensions, an amendment asking for legislation to control private pension schemes would be out of order on the ground of irrelevancy. · He further pointed out that the subject matter of the proposed amendment was being enquired into by a Select Committee.

Instruction outside scope of enquiry of Select Committee.—In a private ruling Mr. Speaker held that, when a Select Committee had been appointed to inquire into the subject matter of the Friendly Societies Bill and the Pension Funds Bill, an instruction to extend its enquiry to the question of the execution of deeds of trust and the creation of trust funds would go beyond the scope of its enquiry and would therefore be out of order.

Minister not being a Member has no seat in either House.—The Hon. J. de Klerk, Minister of Labour and of Public Works, was under sections 51, 52 and 55 of the South Africa Act, unable to take a seat in either House from the commencement of the session until 21st February when, as a duly elected senator, he subscribed to the affirmation of allegiance. During this period other Ministers acted in the House on his behalf.

Minister makes affirmation as Senator before Governor-General.—On 21st February Mr. Speaker announced that an official communication had been received that the Minister of Labour and of Public Works had been elected a senator on 18th February and as senator had subscribed to the affirmation of allegiance before the Governor-General that morning. (The Senate was not sitting at the time, having adjourned from 25th January until 2nd March.)[12]

[1] *See* THE TABLE, Vol. XXIII, p. 161. [2] 87 *Assem. Hans.*, 1114, 2265, 7968. [3] V. & P., 101-2. [4] *See* THE TABLE, Vol. XXIII., p. 162-3. [5] 87 *Assem. Hans.*, 183. [6] V. & P., 715, 722. [7] 88 *Assem. Hans.*, 3429. [8] *See also Sen. Min.*, 1949. [9] V. & P., 66. [10] *Ibid.*, 225, 227. [11] *Ibid.*, 398-9. [12] *Ibid.*, 178.

XV. GROWTH OF PARLIAMENTARY PROCEDURE IN INDIA

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Although parliamentary government is of recent origin in India, legislatures and with them rules of procedure have been in existence for quite a long time. The development of the nucleus of a legislature of five members established in 1833 into the Indian Parliament in 1950 is an interesting history; but what appears most revealing from a study of the growth of parliamentary institutions in India is the fact that from the very beginning great emphasis was laid on rules of procedure. The first rules were made in 1835, and it is on record[1] that Lord Macaulay, who became the first Legislative Councillor under the Reform Act of 1833, had a large hand in drafting those rules. In the course of a century, the legislature which was concerned at first only with "making of laws and regulations" came to exercise all the functions of a parliamentary body. The evolution of parliamentary procedure during the period to meet new changes and new situations is a subject well worth careful study.

Nucleus of a Legislature

The power of legislation, that is to say of making laws applicable equally to all persons and situations, instead of making *ad hoc* orders, was exercised from the beginning of British rule in India, although the two functions of government, legislative and executive, were not differentiated till a much later date—to be precise, till 1833, when the Reform Act was passed by the British Parliament. Till then legislative authority was exercised by executive *fiat*—by regulations made by the executive Government functioning in India.

Under the Reform Act of 1833,[2] the executive authority was vested, as before, in the Governor-General and a Council of three members. But for the purpose of legislation, the Council was enlarged by the addition of another member called the Legislative Councillor and it was the Governor-General with this enlarged Council which had authority to legislate. Although there were a few limitations as to subject-matter, the laws made were to be of the same force and effect as Acts of Parliament. The Court of Directors of the East India Company, however, had the right of disapproving any law and on such disapproval the law had to be repealed. The British Parliament also reserved the right to repeal or amend any law made by the Governor-General in Council. The quorum of the legislative Council was fixed by the Act itself at four—viz., the Governor-General and

three members, but it is curious that the presence of the Legislative Councillor was not insisted upon. The Legislative Councillor also had no right to vote at any meeting of the executive Council.

First Rules of Procedure

The Government of India was asked to frame rules of procedure which required the approval of the Board of Control and had to be laid before the Parliament. In a dispatch[3] said to have been composed by James Mill, the Court of Directors suggested certain general principles to be followed in framing the rules.

"The first principle", said the dispatch,

is that no law except one of an occasional kind or arising out of some pressing emergency should be passed without having been submitted to mature deliberation and discussion.

The dispatch referred to the length and publicity of the process by which Acts were passed by the British Parliament and continued,

We deem it of great moment therefore that you should by positive rules provide that every project or proposal of law shall travel through a definite succession of stages in the Council before it is finally adopted and that at each stage it should be amply discussed and that the intervals of discussion shall be such as to allow each member of Council adequate opportunity of reflection and enquiry.

The Court also suggested that—

the projects of intended laws shall be so made known to the public as to afford opportunities to the persons or classes whom they might particularly affect to offer their comments or complaints to the legislature.

Rules were framed, as already stated, in 1835 embodying the principles and laid the origin of the practice of having three stages of a Bill as in the British Parliament, publishing a Bill in the official Gazette for a specified period and allowing the public to present petitions with respect to any Bill pending in the legislature.

Full-fledged Legislature

It was twenty years later, *i.e.*, in 1853, that a full-fledged Legislative Council came into being. The Government of India Act, 1853,[4] provided for the establishment of a legislature consisting of the Governor-General, the four members of the Executive Council, the Chief Justice and another judge of the Supreme Court of Calcutta, nominated representatives of the Provincial Governments and, if found necessary, two additional members. In the Act the legislature was described as "the Council for making laws and Regulations". Lord Dalhousie, however, suggested[5] that it would not be inappropriate to call itself the "Legislative Council". And it was

so described in the official proceedings until 1861, when, for reasons appearing later on, the old nomenclature was revived. The sittings of the Council were made open to the public and the proceedings were published and sold.

The importance of the newly created Legislative Council in relation to the growth of parliamentary procedure lies in the fact that the Council was for the first time entrusted with the right of framing its own rules of procedure. In a minute[6] submitted to the Council, Lord Dalhousie pointed out that "the first act of the Council must be to frame its rules of procedure which can only be done by the authority of the Council itself".

He formulated certain general principles and also submitted a set of draft rules. But he was careful to add that in doing so he was trying to assist the Council and hoped that the Council would not regard his action as "obtrusive". Lord Dalhousie even went so far as to say that although he was the *ex officio* President of the Council the authority for controlling the deliberations of the Council must be conferred upon him by the Council itself.

Lord Dalhousie's Five Principles

As, apart from their intrinsic merits, the principles enunciated by Lord Dalhousie have been the foundation of parliamentary procedure in India, it would be profitable to discuss them at this stage. Five principles were formulated by Lord Dalhousie and it will be observed that these are substantially derived from the practice of the House of Commons.

First principle. The proceedings of the Council should be conducted with all due formality and should be controlled by an authority emanating from the Council itself.

This principle, it was suggested, required that members should speak from their places, rise when they spoke and address either the chair, as in the House of Commons, or the House, as in the House of Lords. It may be mentioned that the standing orders adopted the practice of the House of Commons. Use of measured and courteous language in debate and some conventional parliamentary phraseology when referring to other members were also said to fall within this principle.

Second principle. The whole discussion in the Council should be carried on exclusively by oral discussion.

This principle of course lays down the fundamental characteristic of a legislative assembly that all matters should be decided by open debate. It is rather strange to find that at a much later date, in 1909, a rule expressly provided that a member might send in a written speech and, what is more strange, that such a speech could, at the discretion of the President, be taken as read!

Third principle. Careful provision should be made for the dis-

couragement of superfluous or crude application for legislation. The Legislative Council should not, according to this principle, take into consideration any proposal for legislation unless such proposal was made by the Government or introduced in the form of an Act by a member.

Fourth principle. The harmonious co-operation of the Executive Government and of the Legislative Council should be facilitated by the forms of procedure of the latter body.

It was suggested that no proposal for legislation affecting (*a*) public finance, (*b*) the Army and (*c*) the relation of the British Government with foreign States should be received from without unless transmitted by the Government of India. It may be mentioned here that the Government of India Act of 1853 for the first time prescribed that all Bills must receive the assent of the Governor-General. Referring to the possibility that even without such a rule as suggested, the Governor-General could prevent such legislation by withholding consent, Lord Dalhousie remarks,

> It is true that the executive Government independently of any such resolution will practically possess an effectual control over such legislation by means of the veto with which the Governor-General has been armed.
>
> But all will feel that the frequent exercise of the power of refusing assent to Acts by the Governor-General is almost as much to be deprecated as the utterance of "*Le Roi s'avisera*" in the Imperial Parliament. It will therefore be very conducive to the public interests if by a standing order such as I have alluded to the probability of conflict between the Supreme Council and the Legislative Council should be rendered remote.

The suggestion was not, however, accepted in its entirety by the Legislative Council. The standing orders provided that the period of notice for the bills of the kind referred to above should be longer and that the motion for introduction should be seconded. In 1861, as will appear later on, it was expressly provided that such bills could not be introduced without the previous sanction of the Governor-General.

Fifth principle. Full opportunity for the discussion and consideration of every legislative measure should be afforded to the Legislative Council and to the public; while the enacting thereof should not be impeded by undue multiplication of forms and consequent facilities for possible obstruction.

It was suggested that all proposals for law (called bills in the standing orders) should be considered in three stages—first, second and third reading. The first reading was to be passed as a matter of course without debate. On the second reading, the debate was to be confined to the general principles of the bill and, if the second reading was agreed to, the bill was to be referred to a Select Committee and also published for general information. On the Select Committee reporting the bill, the Council was to consider the bill clause by clause —the Council might resolve itself into a committee under the standing

orders. But the bill was not to be taken into consideration unless a specified interval—eight weeks in the case of bills relating to Bengal and twelve weeks in other cases—elapsed from the date of its publication. The Bill was then to be read the third time and passed.

As has already been stated, the Act of 1853 required that all bills must receive the assent of the Governor-General before they could become law. The Governor-General hitherto had had no such vetoing power. A majority of the Council could pass any law even though the Governor-General was opposed to it. It was only in the case of bills passed at a meeting of the Council in which the Governor-General was not present that his assent was required.

Standing Orders were framed by the Legislative Council substantially on the lines suggested by Lord Dalhousie. And to this day the procedure relating to bills remains the same except that the practice of the House resolving itself into a committee no longer exists.

Conflict between the Legislative Council and the Government

There was thus established in India a full-fledged legislature with apparently all the powers of a supreme Parliament. The members claimed the right to criticise the Government and a conflict arose between the Legislative Council and the Executive Government.

A large sum of money had been directed, in the face of a grave deficit in the finances, to be paid to the descendants of Tipoo Sultan. There was a public agitation over the matter, and the Council desired that the circumstances in which the grant had been made should be disclosed. With that end in view, a member of the Council put certain questions to the President of the Council, viz., the Governor-General. The Governor-General declined to give any information on the ground that neither the Legislative Council nor any of its members was entitled to ask for such information as they had no power to interfere in the matter.

Dissatisfied with the attitude of the Government, Sir Barnes Peacock, Chief Justice, who was also the Vice-President of the Council, moved a formal motion[7] asking for the information. On a division on the motion the Council was equally divided, but the motion was carried by the casting vote of Sir Barnes Peacock himself, who had presided. Still the Government refused to give the information and informed the Council that

> the interests of the public service forbid his (the Governor-General's) ordering that the papers asked for by the resolution should be laid before the Legislative Council.[8]

The matter did not rest there. A bill was introduced in the British Parliament for expressly limiting the powers and rights of the Legislative Council. Sir Charles Wood, who had himself sponsored the Act of 1853, speaking in Parliament said that—

Quite contrary to his intention, the Legislative Council had become a sort of debating society or petty parliament . . . it was certainly a great mistake that a body of twelve members should have been established with all the forms and functions of a parliament . . . the general opinion condemned the action of the Council when it constituted itself a body for the redress of grievances and engaged in discussions which led to no further result.[9]

Check on Powers of Council

The India Councils Act, 1861,[10] laid down in express terms that "no business other than legislation shall be transacted at any meeting of the Council". Even as regards legislation, it was provided that no bill relating to public revenue or debt, army, foreign affairs or religious rites and usages of Indians should be introduced without the previous sanction of the Governor-General. Besides the right of the Governor-General to assent to or withhold assent from any bill, he was given the right of reserving any bill for the consideration of the Crown. The Crown also reserved the right of disallowing any Act, even though assented to by the Governor-General.

From the point of view of the growth of parliamentary procedure also, there was a check on the powers of the Legislative Council. The power of framing rules, which was taken as inherent in the Legislature in 1853, was expressly vested in the Governor-General in Council—*i.e.*, the executive Government. The Legislative Council was given the power to amend the rules, but any amendment was subject to the assent of the Governor-General and, further, the Secretary of State had the power to disallow any rule, even though assented to by the Governor-General.

Rules were framed by the Governor-General in Council and were adopted by the Legislative Council. The rules, as explained by the Governor-General[11] himself to the Legislative Council, carefully avoided the use of any expression which might imply that the Legislative Council was by itself a separate and independent body. It was emphasised that the Legislative Council was only an enlarged version of the Executive Council of the Governor-General with some additional members who would be summoned to attend when the Council assembled for the purpose of making laws. The word "Session" and other expressions which might give rise to any idea of prorogation were omitted altogether. The term "Legislative Council" which was adopted at the suggestion of Lord Dalhousie was not officially used since then till 1909, when it was used in the Government of India Act of that year itself.

Publication of Bills

Another innovation introduced by the rules of 1862 was the power of the Governor-General to publish a bill in the official Gazette before its introduction in the Legislative Council. The rules provided that if a bill was so published no leave of the Council would be necessary

for the introduction of the bill. It was said that, as the intention of the publication was to invite public criticism and as leave to introduce was given in most cases as a matter of course, it would save much time if a bill could be published on the authority of the Governor-General when the Council was not sitting. The Governor-General in his speech on the adoption of the rule assured the Council that

> " no bill would be so authorised if it was of such a character that the Council would be likely to refuse leave to bring it ".[12]

It was also pointed out that the rule was equally applicable to private members' bills. In practice, it appears that private members do not avail themselves of this rule, which is still current and is applied to Government bills only.

Provincial Legislatures

The Act of 1861 provided for provincial legislatures, and provincial Legislative Councils came into existence in 1862. The rules of procedure were, however, the same as those of the central Council and do not call for separate discussion.

Further Powers

For the next thirty years or so the Legislative Council was engaged exclusively in legislation. In 1892, two new privileges were conferred on the legislature by the India Councils Act, 1892,[13] which authorised the Governor-General to frame rules for allowing the discussion of the annual budget and the putting of questions.

Discussion of Budget

The system of preparing an annual budget and laying it before the legislature was introduced in 1860 by James Wilson, a member of Parliament, who was sent out to India as Finance Member to straighten out the finances of the India Government. No discussion of the budget as such was possible under the rules, but opportunity for discussion was afforded by presenting the budget in connection with some proposal for taxation. The Council, of course, had no right of voting on the budget. Between the years 1861 and 1892 there were, as Lord Curzon pointed out in his speech[14] in moving the second reading of the India Council Bill, only sixteen occasions on which the budget had been discussed.

The rules framed in 1893 prescribed that a financial statement should be presented to the Council every year and that the members should be at liberty to offer any suggestions; the Finance Member would have a right of reply and the discussion should be closed by the President—*i.e.*, the Governor-General—making any observation he might think necessary.

The rules of 1909 made after the Morley-Minto reforms enlarged

to a certain extent the scope of the discussion of the budget. The budget was considered in two stages. A preliminary budget called "the Financial Statement" was first presented to the Council. There was a general discussion and the members could move resolutions recommending alterations in taxation, loans or any item or head of expenditure. After the resolutions had been disposed of, a final budget called "the Budget", revised in accordance with the recommendations of the Council, was presented. The Government was, however, not bound to accept any recommendation; but if it did not accept any, it had to give its reasons when presenting the final budget. There was again a general discussion and the debate closed with the President making a statement.

Certain items of expenditure, such as army, were excluded from the purview of discussion by the rules of 1909.

Questions

It was under the rules framed in 1893 that the members of the Legislative Council first got the right of asking questions. No restrictions were put by the rules on the subjects about which questions could be asked. But in moving for the adoption of the rules, the Governor-General, Lord Lansdowne, pointed out[15] that there were certain matters—*e.g.*, military preparations during hostilities—with regard to which no government could allow itself to be publicly interpellated, and the Governor-General reserved the right of disallowing any question at his discretion on the ground that it could not be answered consistently with the public interest.

There was no provision for the asking of supplementary questions. The right of asking supplementaries was given by the rules made in 1909 and then only to the member asking the question. It was in 1921 that members other than the one putting the question got the privilege of asking supplementaries.

Besides the power of the Governor-General to disallow a question, the rules subsequently framed provided that no question could be asked about foreign relations or matters *sub judice*. At present, the Government has no right of disallowing any question, but a minister can refuse to answer a question on the ground that it cannot be answered consistently with the public interest.

Private Members' Resolutions

The Morley-Minto reforms of 1909,[16] besides enlarging the scope of the budget discussion and allowing supplementaries to questions, for the first time allowed the Legislature to discuss any matter of general public interest, and laid the foundation of non-official resolutions—a common feature in the business in the Indian Legislatures.

The rules provided that resolutions could be moved on any matter of general public interest except such as were not within the legisla-

tive authority of the Council, or were *sub judice* or related to foreign affairs. The Governor-General had also the discretion of disallowing any resolution on the ground that it could not be discussed consistently with the public interest. The resolutions were, however, not decisions of the House binding upon the Government, but were only in the nature of recommendations which the Government might or might not accept.

The rules required the Governor-General to allot such time for the discussion of such resolutions as he considered reasonable. This was the origin of private members' time. No particular day was at first allotted, but after 1937 every Friday was set apart for private members' business. This is the practice still followed.

Montagu-Chelmsford Reforms

It was in 1921, after the Government of India Act, 1919,[17] came into effect, that so far as procedure was concerned the structure of parliamentary government came to be established, although there were some restrictions on the powers of the Legislature. The Legislature got the right of electing its own presiding officer, subject to the approval of the Governor-General, and of voting on the budget. The rules conferred another important right on the Legislature—that of moving an adjournment motion for the purpose of discussing any matter of urgent public importance, analogous to adjournment motions under S.O. No. 9 of the House of Commons. The Act of 1909 for the first time also laid down in express terms that there should be freedom of speech in the Legislature and immunity for the official publication of the proceedings.

Rules of procedure were divided into two classes—rules proper and standing orders. Rules were framed by the Government and the standing orders by the Legislature. The first standing orders were however made by the Government, but could be amended by the Legislature with the consent of the Governor-General.

Financial Procedure

The procedure for the discussion of the budget was, of course, necessarily changed altogether. The budget was presented in the form of demands for grants analogous to the Votes in the House of Commons. After the presentation of the budget, there was a general discussion; thereafter, demands were made and discussed and voting took place. The principle of the financial initiative of the Crown was adopted and it was provided that no appropriation of money could be made except on the recommendation of the executive Government. The Legislature could reduce any grant, but could not increase or alter the destination of any grant. Provision was also made for the presentation and voting of supplementary budgets and excess or additional grants.

The rules also provided for the setting up of a Public Accounts Committee for scrutinising the audited accounts of the Government. The Committee was to consist of members, some of whom were elected by the Legislature and some nominated by the Government and was not, therefore, entirely a committee of the House. Later on, after 1937, the Public Accounts Committee came to be wholly elected by the Legislature.

Powers of the President

The powers of the presiding officer elected by the Legislature—who was called the President—were prescribed by the rules and the standing orders. He was to preserve order and to have all powers necessary for the purpose of enforcing his decisions on all points of order. Among the powers given to the President was one to direct any member whose conduct was disorderly to withdraw from the House for the day or, if he was guilty a second time during the session, for the remainder of the session.

The rules which were framed by the Government of India empowered the Governor-General to nominate a panel of chairmen to preside during the absence of the President or the Deputy President and also to disallow a question on certain grounds. The rules also provided that an adjournment motion for the purpose of discussing a matter of urgent public importance could be moved only with the consent of the Governor-General. When the rules were placed before the Parliament for approval, the Parliament amended the rules[18] in all these cases and substituted the President for the Governor-General. The Parliament, however, added a rule that an adjournment motion could be disallowed by the Governor-General even though the President had given his consent on the ground that it could not be discussed without detriment to the public interest. A similar power had been reserved to the Governor-General in the case of resolutions.

An interesting incident took place in 1924 which had a bearing on the powers of the President. A demand for the salaries of two ministers having once been rejected by the Bengal Legislative Council, a supplementary demand was made for the salaries of the same ministers. The President having declined to rule the motion for the demand out of order, a suit was brought in the High Court and the High Court issued an injunction[19] restraining the President from putting the motion before the Council. There was a controversy about the jurisdiction of the Court to interfere in such matters. The matter was finally settled by the Government of India Act, 1935, which made an express provision that the Presiding Officer of a legislature would not be subject to the jurisdiction of any court in respect of his powers for regulating the procedure and conduct of business of the House.

1937 and after

It will have appeared from the survey made above that by 1921 all forms of parliamentary business had come within the purview of the Legislature, although its powers were to a certain extent restricted. Rules of procedure therefore had come into existence providing for all kinds of such business. Under the Government of India Act, 1935,[20] the Legislature got the right of framing its own rules of procedure except with regard to a few specified matters, such as financial business and matters within the individual responsibility of the Governor-General. Even with regard to these, the rules were to be framed by the Government in consultation with the presiding officer of the Legislature. It was after the attainment of independence in 1947 that the Legislature was given the full right of regulating its own procedure.

The rules and standing orders made by the executive Government from time to time, within their own spheres and within the restrictions imposed by the statutes, it will have been observed, closely followed the practice of the House of Commons. It is for these reasons that when the Legislature got the right of framing its own rules, it was only necessary to make minor adaptations to suit the changed circumstances. The rules of procedure now in force substantially follow the old rules.

[1] Minute of Lord Dalhousie submitted to the Legislative Council, dated 17th May, 1854. [2] 3 & 4 Will. 4, c. 85. [3] Dispatch from the Court of Directors of the East India Co. to the Government of India No. 44, dated 10th December, 1834. [4] 16 & 17 Vict., c. 95. [5] Minute of Lord Dalhousie dated 17th May, 1854. [6] *Ibid.* [7] Proceedings of the Legislative Council of India, Vol. VI (1860), c. 1343. [8] *Ibid.*, c. 1402. [9] 163 *Com. Hans.* (Third Series), c. 634. [10] 24 & 25 Vict., c. 67. [11] Proceedings of the Council of the Governor-General of India, Vol. I (1862), p. 187. [12] *Ibid.*, p. 188. [13] 55 & 56 Vict., c. 14. [14] 3 *Com. Hans.* (Fourth Series), c. 52. [15] Proceedings of the Council of the Governor-General of India, Vol. XXXII (1893), p. 43. [16] India Councils Act, 1909, 9 Edw. 7, c. 4. [17] 9 & 10 Geo. 5, c. 101. [18] First Report of the Joint Select Committee on Rules under the Government of India Act, 1919, dated 6th July, 1920. [19] *Kumar Shankar Roy* v. *Cotton*, 40 Calcutta Law Journal, p. 515. [20] 26 Geo. 5 and 1 Edw. 8, c. 2.

XVI. APPOINTMENT OF SPEAKER OF LOK SABHA

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On 26th January, 1950, when the Constitution came into force, the Constituent Assembly (Legislative) became the Provisional Parliament and the Speaker of the Constituent Assembly (Legislative) became the Speaker of the Provisional Parliament. The Constitution

provided that the Provisional Parliament and its Speaker should continue till the date when the President summoned the new Parliament elected under the provisions of the Constitution.[1]

Accordingly, on 17th April, 1952, when the President signed the Order summoning the House of the People and the Council of States which had been elected at the General Elections held earlier in the year, the Provisional Parliament ceased to function from that date and consequently the Speaker of the Provisional Parliament also ceased to hold the office of the Speaker from that date.

Subsequently, on the same day the President made an Order under Article 95(1), appointing the outgoing Speaker, Shri G. V. Mavalankar, a member of the House of the People, to perform the duties of the Speaker of the House until the first sitting of the House. The following is the text of the Order issued by the President:

> Whereas the offices of Speaker and Deputy Speaker of the House of the People are vacant;
>
> In exercise of the powers conferred upon me by clause (1) of Article 95 of the Constitution, I, Rajendra Prasad, President of India, hereby appoint Shri Ganesh Vasudeo Mavalankar, a Member of the House of the People, to perform the duties of the Speaker until the first sitting of the said House.

It may be stated in this connection that Article 94 provides that whenever the House of the People is dissolved, the Speaker does not vacate his office until immediately before the first sitting of the House of the People after the dissolution.

The President's Order referred to above, therefore, was in the nature of a link for the continuance of the Speaker between the fading away of the Provisional Parliament and the Constitution of the House of the People.

The first sitting of the House of the People was fixed for 15th May, 1952. According to the President's Order cited above, the office of the Speaker became vacant from the morning of 15th May, 1952. The President, therefore, issued an Order on the morning of 15th May, 1952, appointing Shri B. Das, member of the House of the People, to perform the duties of the Speaker until the House elected the Speaker that day. The President's Order was issued in the following terms:

> Whereas the offices of Speaker and Deputy Speaker of the House of the People are vacant;
>
> In exercise of the powers conferred upon me by clause (1) of Article 95 of the Constitution, I, Rajendra Prasad, President of India, hereby appoint Shri B. Das, a Member of the House of the People, to perform the duties of the Speaker at the sitting of the House of the People on the 15th May, 1952, till the election of the Speaker by the said House on that day.

A vacancy in the office of the Speaker may arise in one of the circumstances mentioned in Article 94—viz., by the Speaker ceasing to be a member of the House of the People, by at any time writing under

his hand addressed to the Deputy Speaker resigning his office, or by his removal from office by a resolution of the House of the People passed by a majority of all the then members of the House.

It might be stated here that there are two ways of appointing the Speaker. One is by election by the House, by which method a permanent Speaker is appointed. The other method is that the President appoints a Speaker for a given period, in order to provide a Head of the House during periods in which the offices of Speaker and Deputy Speaker are vacant and until the House elects either the Speaker or the Deputy Speaker. This is to ensure that the Head of the House is always in office. The Speaker appointed by the President, or the Deputy Speaker when performing the duties of the office of the Speaker, has all the powers of the Speaker under the Constitution, Rules of Procedure or otherwise. However, in order to distinguish the temporary Speaker appointed by the President from the permanent Speaker elected by the House, the former is designated as Speaker *pro tem*.

The relevant rule from the Rules of Procedure and Conduct of Business in the Lok Sabha regarding the conduct of elections to the Office of Speaker reads as follows:

(1) The election of a Speaker shall be held on such date as the President may fix, and the Secretary shall send to every member notice of this date.

(2) At any time before noon on the day preceding the date so fixed any member may give notice in writing, addressed to the Secretary, of a motion that another member be chosen as the Speaker of the House, and the notice shall be accompanied by a statement by the member whose name is proposed in the notice that he is willing to serve as Speaker if elected:

Provided that a member shall not propose his own name, or second a motion proposing his own name, or propose or second more than one motion.

(3) A member in whose name a motion stands on the list of business may, when called, move the motion or withdraw the motion, in which case he shall confine himself to a mere statement to that effect.

(4) The motions which have been moved and duly seconded shall be put one by one in the order in which they have been moved, and decided, if necessary, by division. If any motion is carried, the person presiding shall, without putting later motions, declare that the member proposed in the motion which has been carried, has been chosen as the Speaker of the House.

The Prime Minister communicates to the Secretary of the House the date that will be convenient for holding the election to the office of Speaker. The Secretary of the House then submits a formal note embodying the recommendations of the Prime Minister to the President for his orders. After the President has approved the proposal a paragraph is issued in Parliamentary Bulletin Part II for the information of members in the following terms:

In pursuance of sub-rule (1) of rule 7 of the Rules of Procedure and Conduct of Business in Lok Sabha the President has been pleased to fix ..... (day of the week) the ..... 1956 for the holding of the election to the office of the Speaker of Lok Sabha.

The date is so chosen that members have sufficient time to give notices of motions.

In the case of the election which was held in 1952, a notice was given by the Leader of the House, Shri Jawaharlal Nehru, on 13th May, 1952, in the following terms:

I give notice of the following motion which I propose to move in the House on the 15th May, 1952:
That Shri G. V. Mavalankar be chosen as the Speaker of this House.

It was seconded by Shri Satya Narayan Sinha, Minister of Parliamentary Affairs. The notice also contained a statement signed by Shri G. V. Mavalankar that he was willing to serve as Speaker, if elected.

Two more notices proposing Shri G. V. Mavalankar were received from Shri Shree Narayan Das and Pandit Thakur Das Bhargava, seconded by Shri Hira Singh Chinaria and Shri S. N. Buragohain respectively. There were two other notices of motions from Shri N. Sreekantan Nair and Shri A. K. Gopalan, seconded by Shrimati Renu Chakravartty and Shri Tridib Kumar Chaudhuri respectively proposing Shri Shankar Shantaram More.

All these notices in the order of receipt in point of time were included in the List of Business for 15th May, 1952, which was issued on 13th May, 1952. As there was no other business on 15th May, the business relating to the election of the Speaker was put down as the first item. All the motions were moved and placed before the House by the Speaker *pro tem.* After the first motion was carried the rest were not proceeded with. The Speaker *pro tem.* (Shri B. Das) declared the decision in the following terms:

I declare that Shri G. V. Mavalankar has been duly elected as the Speaker of the House. I have now much pleasure in inviting Shri G. V. Mavalankar to occupy the Chair.

Then the Leader of the House, accompanied by Maulana Abul Kalam Azad and the Leader of the Opposition (Shri A. K. Gopalan), went to the seat of Shri G. V. Mavalankar, bowed to him and conducted him to the Chair. Thereafter felicitations were offered by the Leader of the House and other members. Later the Speaker replied to the felicitations.

* * * * *

On 27th February, 1956, Mr. Speaker Mavalankar passed away at 7.45 a.m. There occurred a vacancy in the Office of the Speaker from that time and date. Shri M. Ananthasayanam Ayyangar, who was holding the Office of the Deputy Speaker at that time, began to perform the duties of the Office of the Speaker under the provisions of Article 95(1) of the Constitution.

On 3rd March, 1956, the President appointed 8th March, 1956, for holding the election to the Office of the Speaker. As on the last occasion the proposal was submitted to the President by the Secretary of the House after the date was proposed by the Prime Minister. This order of the President was notified in the Parliamentary Bulletin.[2]

On 5th March, 1956, notice of the following motion was received from the Prime Minister, seconded by Shri Satya Narayan Sinha, Minister of Parliamentary Affairs, and was accompanied by the statement of Shri M. Ananthasayanam Ayyangar that he was willing to serve as Speaker, if elected:

I give notice of the following motion which I propose to move in the House on the 8th March, 1956:

That Shri M. Ananthasayanam Ayyangar, a Member of the House, be chosen as the Speaker of this House.

Another notice proposing Shri Ananthasayanam Ayyangar was received from Shri Tulsidas Kilachand and seconded by Shri Frank Anthony. Both the notices were included in the order of receipt in point of time in the List of Business for 8th March, 1956, which was issued on 6th March, 1956.

On 7th March, 1956, after the House adjourned for the day, Shri M. Ananthasayanam Ayyangar resigned the Office of Deputy Speaker and addressed the letter to the Speaker as provided in the Constitution even though the Office of Speaker was vacant at that time. Shri Ananthasayanam Ayyangar felt that the Constitution provided that two members of the House should respectively hold the Offices of Speaker and Deputy Speaker, and since there was no automatic vacation of the office of Deputy Speaker in case he was elected as Speaker, Shri Ayyangar felt that if he did not resign the Office of Deputy Speaker before the motion for his election as Speaker was passed, a situation might arise when he would be holding two offices concurrently—viz., that of the Speaker and Deputy Speaker—even though the period during which he held these offices concurrently might be infinitely small.[3]

At 5.30 p.m. on 7th March, 1956, after receipt of resignation from Shri Ayyangar from the Office of Deputy Speaker, the Secretary of Lok Sabha submitted a note to the President informing him that both the Offices of Speaker and Deputy Speaker were vacant and proposing that the Prime Minister had suggested that Sardar Hukam Singh, a Member of Lok Sabha, should be appointed to perform the duties of the Speaker until the election of the Speaker by Lok Sabha on 8th March, 1956, the date previously appointed by the President for the purpose. The President approved the order at 6.10 p.m. in the following terms:

Whereas the offices of the Speaker and Deputy Speaker of the House of the People are vacant;

In exercise of the powers conferred on me by clause (1) of Article 95 of the Constitution, I, Rajendra Prasad, President of India, hereby appoint Sardar Hukam Singh, a member of the House of the People, to perform the duties of the Speaker till the election of the Speaker by the said House on the 8th March, 1956.

This order was immediately published in the Gazette of India and also in the Parliamentary Bulletin Part II. The resignation of the Office of Deputy Speaker by Shri M. Ananthasayanam Ayyangar was also published in the Gazette of India and the Parliamentary Bulletin Part II.

On 8th March, 1956, when the House assembled at eleven o'clock, the Secretary informed the House of the resignation of Shri M. Ananthasayanam Ayyangar from the Office of Deputy Speaker and also read out the order of the President regarding the appointment of Sardar Hukam Singh as Speaker *pro tem*. Thereafter the Question Hour began and at the end of the Question Hour, business relating to the election of the Office of the Speaker was taken up. As on the previous occasion, the motion moved by the Leader of the House was placed before the House by the Speaker *pro tem*.

Shri Tulsidas Kilachand and Shri Frank Anthony, in whose names the other identical motion stood, were not present in the House and so only the first motion was proposed. After it was carried, the Leader of the House and the Deputy Leader of the Opposition (Shri Hiren Mukerjee) walked to the seat of Shri M. Ananthasayanam Ayyangar, bowed before him and conducted him to the Chair. Then, after felicitations, the House passed on to the other business.

A question also arose in this connection whether, when the offices of Speaker and Deputy Speaker were vacant, a Chairman on the Panel of Chairmen under the Rules of Procedures could function. Clause (2) of Article 95 of the Constitution refers to the absence of Speaker and Deputy Speaker when any one on the Panel of Chairmen might preside over the House. As the term "absence" implies that the incumbent is in office, and is temporarily unable to discharge his functions, it was held that the Panel could not function whenever the offices of Speaker and Deputy Speaker were vacant, but that if the President appointed a Member to perform the duties of the Speaker, the Panel could function in his absence.

[1] Constitution, Art. 379.
[2] Constitution, Arts. 93 & 94.
[3] Part II, dated 3rd March, 1956.

XVII. CAPITAL OF SOUTHERN RHODESIA

By J. R. Franks, B.A., LL.B.,
Clerk of the Southern Rhodesia Legislative Assembly

Prior to the federation of the three Central African Territories of Southern Rhodesia, Northern Rhodesia and Nyasaland in 1953, Salisbury had been the capital of Southern Rhodesia for many years.

To give the full history of what proved to be a most contentious question in the first two sessions of the Southern Rhodesia Legislative Assembly, it is necessary to go back to September, 1953, when, in the last few days of the expiring Parliament immediately before federation came about, the Southern Rhodesia Legislative Assembly passed the following resolution submitted by a private member—

> That, in the event of the Federal Parliament deciding on Salisbury as the Federal capital, the Southern Rhodesia Territorial capital shall not be situated within one hundred miles of Salisbury.[1]

At its first session, in 1954, the Federal Assembly of Rhodesia and Nyasaland adopted the recommendation of a select committee that Salisbury should be the capital of the Federation.

This decision was followed in the Legislative Assembly of Southern Rhodesia by the appointment in July, 1954, of a select committee

> to consider and report upon the advisability of transferring the Territorial capital (from Salisbury) to some other centre in the Colony; and, if so considered advisable, to make recommendations in regard to the centre to which the capital should be transferred.[2]

The select Committee recommended that it was inadvisable to move the capital.[3] In the debate on the Report there was considerable discussion on the cost of setting up the capital in another centre and, on the Prime Minister's assurance that a commission would be appointed to inquire fully into all aspects of the problem when more information was available, the recommendation was rejected.[4]

The commission, consisting of Mr. Justice H. J. Clayden, formerly a Judge in England and the Union of South Africa, Mr. F. G. Menzies, C.B.E., formerly Crown Solicitor of the State of Victoria and Mr. R. P. Plewman, formerly a Chief Magistrate and Auditor-General of the Union of South Africa, was appointed in July, 1955, and reported to the Governor in September their

> conclusion that it is not shown to be in the best interests of the Colony of Southern Rhodesia and of the Federation that the capital of Southern Rhodesia should be in some place other than Salisbury.[5]

It was considered advisable to reach a decision on the question as early as possible, and consequently Parliament met on 30th November, 1955, to discuss the report on a motion by the Prime Minister—

That the House, having taken into consideration the Report of the Commission of Inquiry into the siting of the Territorial Capital, is of the opinion that the capital shall remain in Salisbury.

The debate lasted for three days, almost every Member taking part.[6] Strong opposition to the motion was voiced by Members representing constituencies in Matabeleland, who contended that it was in the interests both of Southern Rhodesia and the Federation to transfer the capital to Bulawayo or some other centre in Matabeleland. The cost of the transfer submitted by the Commission, approximately £3 million, was not accepted by several Members, who expressed the view that the cost would prove to be less. One of the arguments against the motion was that Salisbury was developing at the expense of other centres and that to transfer the capital to one of the other centres mentioned (Bulawayo, Gwelo or Que Que) would remedy this ill.

An amendment which sought to reach a decision by way of a referendum was defeated and the motion, to retain Salisbury as the capital, was affirmed by the same number of votes, 17 to 10 (7). The voting strength of the House is 30.

[1] 34 *Hans.*, 1916. [2] 35 *Ibid.*, 23. [3] V.P., 1954, p. 303. [4] 36 *Hans.*, 3067. [5] Report of the Commission on the Siting of the Capital of Southern Rhodesia, 1955. [6] 37 *Hans.*, 1865 *et seq.* [7] *Ibid.*, 2091.

XVIII. CONSTITUTIONAL DEVELOPMENTS IN NYASALAND, 1955

By P. A. Richardson,
Formerly Clerk to the Nyasaland Legislative Council

In June, 1955, the Secretary of State for the Colonies announced new constitutional proposals for Nyasaland which were subsequently given effect by the Nyasaland (No. 2) Order in Council, 1955, and by Additional Royal Instructions issued by Her Majesty the Queen on the 18th August, 1955.[1] These instruments provided that the Legislative Council, which had previously consisted of three *ex officio* members, seven nominated official members, seven non-African nominated unofficial members, and three African nominated unofficial members, should consist of:

(*a*) the Governor as President;
(*b*) four *ex officio* Members;
(*c*) seven Official Members;
(*d*) eleven Elected Members, of whom six were to be non-African and five Africans.

These changes involved an increase of one *ex officio* Member and one Unofficial Member, the number of non-African Unofficial Members however being reduced from seven to six and the number of African Unofficial Members being increased from three to five.

The clauses in these constitutional instruments effecting these changes, however, were not brought into effect immediately but were reserved to a date to be appointed later by the Governor in order to allow time for arrangements for the necessary African and non-African elections to be made. They were in fact brought into effect on the 8th February, 1956, by a Proclamation[2] issued by the Governor the previous day.

In the meantime, at a meeting of the Legislative Council on the 5th September, 1955, a Bill was introduced[3] and subsequently passed into law as the Legislative Council Ordinance, 1955,[4] to provide for elections of both African and non-African elected Members of Council. Under this Ordinance somewhat different electoral arrangements were prescribed for African and non-African elections.

For the non-African elections provision was first of all made for the compilation of a non-African register of voters, secondly for the division of the territory into electoral areas by an Electoral Commission appointed by the Governor, and finally for the holding of the elections themselves.

Compilation of the register of non-African voters entitled to the franchise was put in hand immediately after the enactment of the Legislative Council Ordinance, 1955, and was completed by mid-October, resulting in the registration of 2,210 voters. Any non-African was entitled to be registered as a voter provided he or she were:

(*a*) a British subject,
(*b*) twenty-one years of age or over,
(*c*) had either been born in the Protectorate or had resided therein for a continuous period of two years immediately preceding the date upon which he or she claimed registration (subject to certain exceptions in respect of temporary absences),
(*d*) had the necessary means qualification (occupancy of property of the value of £250 or receipt of an income of at least £200 per annum),
(*e*) had the requisite educational qualifications (an adequate knowledge of the English language and ability to complete unassisted by any other person the prescribed form of claim for registration as a voter), and
(*f*) was not otherwise disqualified as a voter under the provisions of the Ordinance.

On completion of the electoral roll, an Electoral Commission was appointed by the Governor on the 24th November, 1955,[5] to divide the Protectorate into six electoral areas. This Commission reported

in December[6] and on the 24th December, 1955, the boundaries of the six electoral areas were proclaimed by the Governor by Proclamation published in a special Gazette on that date.[7]

Election of the African Members is by means of the African Provincial Councils acting as electoral colleges, the Southern Province and Central Province African Provincial Councils each electing two Members and the Northern Province African Provincial Council electing one Member.

The old Legislative Council met for the last time on the 6th February, 1956, to transact formal business and to take leave of the Governor (who was proposing to leave the Protectorate at the end of March, 1956, on leave pending retirement), and the following day the Governor issued the Proclamation[8] bringing into effect Articles 2 and 3 of the Nyasaland (No. 2) Order in Council, 1955, which had the effect of dissolving the old Legislative Council and leaving the way open to the nomination of candidates and the holding of elections to to the new Legislative Council.

Thursday, the 23rd February, 1956, was appointed as Nomination Day and resulted in four out of the six non-African seats and all of the African seats being contested. In two of the non-African constituencies candidates were returned unopposed and have been duly declared elected to the new Council. Thursday, March 15th, 1956, was appointed Polling Day for both African and non-African elections.

[1] Government Notice No. 132 of 1955 (Laws of Nyasaland, 1955 Volume, p. 159). [2] Government Notice No. 27 of 1956 (Supplement to Nyasaland Extraordinary Gazette No. 6 of 1956, dated 7th February, 1956). [3] *Hans.*, 5th September, 1955, pp. 5-30. [4] No. 25 of 1955. [5] Government Notice No. 188 of 1955 (Laws of Nyasaland, 1955 Volume, p. 225). [6] The Report of the Electoral Commission was made direct to the Governor and was not published, but the Proclamation of 24th December was based directly thereon. [7] Government Notice No. 201 of 1955 (Laws of Nyasaland, 1955 Volume, p. 235.
[8] Government Notice No. 28 of 1956 (Supplement to Nyasaland Gazette No. 7 of 1956, dated 9th February, 1956).

XIX. FEDERATION OF MALAYA: THE INAUGURAL MEETING OF THE SECOND LEGISLATIVE COUNCIL

By C. A. Fredericks,
Clerk of the Legislative Council

The Second Legislative Council of the Federation of Malaya held its Inaugural Meeting on the 31st August, 1955, at 9.30 a.m. On the previous evening the Council had held its first meeting for the purpose of administering the Legislative Councillor's Oath to the ninety-eight new Members.

By 8.25 a.m., on the morning of Wednesday the 31st August, 1955, all Members of the Council and guests other than the Distinguished Guests were already in their seats in the sheltered enclosures which had been erected in the Courtyard of the Council Building. In the centre of the Courtyard, in front of the guests' enclosures, was placed a Saluting Base, gaily decorated with flowers, while on either side of the Saluting Base there had been erected two flagstaffs bearing, furled, the Union Jack and the Federation Flag respectively.

A Guard of Honour drawn from the Federation of Malaya Police Force was drawn up facing the Saluting Base. Behind the Guard of Honour was the Police Band.

Arrival of Distinguished Guests

By 8.35 a.m. the Distinguished Guests began to arrive. The Commander-in-Chief, Far East Air Force, was the first to arrive, with the Acting Commander-in-Chief, Far East Land Forces, and the Commander-in-Chief, Far East Station, following in succession. Each in turn was escorted to the Saluting Base, and accorded a General Salute by the Guard of Honour.

The Representatives of Their Highnesses the Rulers of the nine Malay States were next to arrive. They came resplendent in colourful Malay national costume of vivid hues. As each arrived, he was escorted to the Saluting Base and accorded a Royal Salute, while the Police Band played the first part of the respective State Anthems.

The Rulers' Representatives were followed by His Excellency the Commissioner-General for the United Kingdom in South-East Asia (the Rt. Hon. Malcolm MacDonald). The Guard of Honour received him with a Royal Salute, while the Band played the first part of "God Save the Queen".

Arrival of His Excellency the High Commissioner

Then His Excellency the High Commissioner, dressed in blue Colonial Service uniform with sword, arrived. He was received by the Clerk of the Legislative Council, who escorted him to the Saluting Base, where the Guard of Honour accorded him a Royal Salute and the Band played the first part of "God Save the Queen". The Union Jack and Federation Flag were broken. He then inspected the Guard of Honour. At the conclusion of the inspection, His Excellency was conducted upstairs to a waiting room, while Members and guests proceeded upstairs to their places in the Council Chamber.

Commencement of Inaugural Meeting

At 9.30 a.m., by which time Members and guests were all in their seats in the Chamber, the Division Bells were rung to herald the commencement of the Inaugural Meeting.

Mr. Speaker, preceded by the Serjeant-at-Arms with the Mace and

by the Clerk, then made his entry into the Council Chamber, all present standing. Mr. Speaker ascended the dais to his seat, the Mace was placed on the Table, and all resumed their seats after Mr. Speaker had bowed to the House and the House had bowed in return.

After Prayers, Mr. Speaker announced: "Honourable Members, His Excellency the High Commissioner desires to address the House." The House rose to its feet as he descended from the dais and left the Chamber in procession by the Public Entrance to meet His Excellency the High Commissioner. After greeting the High Commissioner, Mr. Speaker returned in the company of His Excellency to the Chamber. At the entrance to the Chamber, the Serjeant-at-Arms announced: "Gentlemen, His Excellency the High Commissioner." All present rose. The procession then proceeded within the Bar towards the dais. The Mace was placed under the Table, His Excellency and Mr. Speaker bowed to the House, the House bowed in return. All resumed their seats. His Excellency was seated behind Mr. Speaker, on a chair which had been placed on a slightly higher level than Mr. Speaker's.

The Clerk announced: "His Excellency the High Commissioner," whereupon His Excellency commenced his Address.

At the conclusion of his Address, His Excellency resumed his seat. Mr. Speaker then suspended the sitting of the Council to invite th Keeper of the Rulers' Seal (Yang Teramat Mulia Tunku Ya'aco ibni Al-Marhum Sultan Abdul Hamid Halim Shah) to deliver to th House a Message from Their Highnesses the Rulers. The Keeper oi the Rulers' Seal had been seated during all this time with some of the Rulers' Representatives on a dais on the right of Mr. Speaker's table. The remaining Representatives of the Rulers were seated on a similar dais on the left.

The Keeper of the Rulers' Seal then ascended Mr Speaker's dais and took a seat beside Mr. Speaker, in front and to the right of His Excellency the High Commissioner. He delivered the Message, which was written on a scroll of yellow silk, in Malay. When he had finished, he resumed his seat beside Mr. Speaker, who then replied to the Rulers' Message on behalf of the Council. After finishing his reply, Mr. Speaker then read a message of good wishes and fraternal greetings from the Legislative Assembly of the Colony of Singapore. The Keeper of the Rulers' Seal then descended from Mr. Speaker's dais and resumed his original seat among the Representatives of the Rulers.

Mr. Speaker then announced the resumption of the Council. The Minister for Transport (Hon. Colonel H. S. Lee) rose and moved the following motion standing in his name on the Order Paper:

That this Council on the occasion of the departure of His Excellency the Right Honourable Malcolm MacDonald, Commissioner-General for the United Kingdom in South-East Asia, to take up his new appointment as High Com-

missioner for the United Kingdom in India, desires to record its warm appreciation of his outstanding services to the Federation of Malaya and to extend its best wishes to him in his future office and requests Mr. Speaker to cause to be conveyed to the Commissioner-General a message to this effect.

It may be mentioned that the Rt. Hon. Malcolm MacDonald was present, seated among the Guests in the Distinguished Visitors' Gallery. Another distinguished guest present was the Rt. Hon. Alan Lennox-Boyd, Secretary of State for the Colonies.

The motion was seconded by the senior unofficial Member of the Council, the Hon. Tuan Haji Sheikh Ahmad bin Sheikh Mustapha. The motion was agreed to *nem. con.*

Secretary of State invited on to the Floor

Mr. Speaker suspended the Council once more, this time to invite, on behalf of the House, the Secretary of State for the Colonies, the Rt. Hon. Alan Lennox-Boyd, on to the Floor. The Secretary of State rose from his seat in the Distinguished Visitors' Gallery and walked to the Bar of the House, where he was met by the Serjeant-at-Arms, and escorted to a seat which had been placed in the well of the Chamber. Dressed in formal morning dress, the Secretary of State presented a gallant and impressive figure as he strode down from the Gallery to the well.

When he had seated himself, the Chief Minister (Yang Teramat Mulia Tunku Abdul Rahman ibni Al-Marhum Sultan Abdul Hamid Halim Shah) rose and delivered a speech of welcome, to which he also coupled an expression of his Government's desires and hopes in the matter of constitutional reform. When he concluded, the Council Chamber resounded with the cry: "Merdeka! Merdeka! Merdeka!"

The Secretary of State replied with his usual forceful eloquence. When he finished, he bowed to Mr. Speaker, and withdrew from the Floor, returning to his seat in the Gallery.

Mr. Speaker then adjourned the House for half an hour. His Excellency the High Commissioner and Mr. Speaker then left the Chamber in procession to the main entrance to the Council Building, where His Excellency's car was waiting. As His Excellency's car left the precincts of the Council, a salute of nineteen guns was fired.

Thus ended the ceremonial Inaugural Meeting of the Second Legislative Council.

The Council resumed later and proceeded to the transaction of the business set down on the Orders of the Day, after which it adjourned.

XX. APPLICATIONS OF PRIVILEGE, 1955

1. At Westminster

Access to the precincts of the House of Commons.—(1) On 26th January Mr. George Craddock (Bradford, S.), by private notice, asked the Secretary of State for the Home Department (Rt. Hon. G. Lloyd-George)

Why mounted police were used outside the Palace of Westminster last night, with the result that constituents of the hon. Member for Bradford, South, were unable to enter the Palace to see their Member.

Before a reply could be given, Mr. Parkin (Paddington, N.) asked Mr. Speaker for his interpretation of the Sessional Order which directs the Commissioner of Police to preserve Members' freedom of access to the Palace of Westminster. He averred that on the previous evening certain of his constituents had been prevented by mounted police from obtaining access to St. Stephen's Hall, and that when he himself had crossed the road to bring five of them over, he had himself been ridden down and abused by a mounted policeman—a matter of which he made no personal complaint. Stating, however, that there was a marked difference between the attitudes of the police inside and outside the building, he asked whether, in interpreting the Sessional Order, the Commissioner of Police acted under Mr. Speaker's authority or used his own discretion.

Mr. Speaker replied that the interpretation of the Sessional Order by the Commissioner was a matter for the Commissioner, subject to the control of the Home Office, and that he himself had absolutely no control over the police outside the House.

After several further exchanges, during the course of which it was suggested by Mr. S. Silverman (Nelson and Colne) that there had been a breach of privilege, the Home Secretary replied:

The answer to the Private Notice Question is as follows. In pursuance of the Sessional Order it is the duty of the police to take all necessary steps to keep free and open the passages through the streets leading to this House and to prevent disorder in those passages. Last night a crowd of persons congregated outside St. Stephen's Entrance, and as congestion was caused and the crowd was becoming disorderly the police found it necessary to disperse it.[1]

No supplementary questions were asked at this stage, since Mr. Speaker was under the impression that Mr. Craddock had given verbal notice that he was proposing to raise the matter on the adjournment (which Mr. Craddock later denied had been his intention), and a new Member was allowed to take his seat. Afterwards, in response to several points of Order, Mr. Speaker permitted supplementary questions upon the details of the previous evening's incidents, to

which the Home Secretary replied. Mr. Paget (Northampton) then alleged that the point at issue was whether the police duties had been carried out in a manner conflicting with the privileges of the House, and asked whether that point should not be investigated by the Committee of Privileges. To this Mr. Speaker replied that no submission had yet been completely made to him upon the question of Privilege. After some further questions and answers, Mr. Speaker said:

An unusual position has arisen, because the question was originally raised by the hon. Member for Paddington, North (Mr. Parkin), who was careful to say in his submission to me that he had no personal complaint. It was upon that that the hon. Member for Nelson and Colne wished to raise the issue of Privilege.

I feel that the question of Privilege is a very serious matter and one not to be lightly invoked by this House if it is to maintain its full force. Therefore, having heard only a partial account from the hon. Member for Paddington, North, of what happened to him, I am unable to make up my mind whether he thinks that he was deliberately molested when he was trying to reach the House—which would undoubtedly be a *prima facie* breach of Privilege—or whether he considers himself to have been a victim of the disorderly conditions that were prevailing outside. I should like to hear from him whether he considers that what happened to him amounted to a breach of Privilege.

Mr. Silverman submitted, at some length, that his point of privilege was not confined to the matter of Mr. Parkin's complaint; more succinctly, Mr. Paget said that it was clear that the ordinary working of the House had been interfered with on the previous night, that it was the duty of the Committee of Privileges to investigate such things, and that it was not necessary, when the workings of the House were interfered with, to specify by whom. Mr. Speaker then ruled:

It is not the duty of Mr. Speaker at any time to say whether a breach of Privilege has occurred or not. He is only asked to give his opinion whether a *prima facie* case exists or not. The guardian of the privileges of this House is the House of Commons itself. To found even a *prima facie* case of breach of Privilege, there must be a definite complaint of breach of Privilege. I have heard none such. That would not close the matter. It has been raised at the earliest possible moment. If the matter is crystallised, and if facts are brought to my notice of any definite act constituting a breach of the Privileges of this House, the House will be ready to consider it, but, at the present moment, no such definite complaint has been made to me. Therefore, I rule that there is no *prima facie* case of breach of Privilege. If the hon. Member wishes to pursue this matter on the present evidence, his remedy is to put down a Motion for the consideration of the House.[2]

(2) On 16th November, while the House was in Committee, Mr. Arthur Lewis (West Ham) offered to raise as a point of order a complaint that some of his constituents were being prevented from coming to protest to him about the provisions of the Budget. The Temporary Chairman (Major W. Anstruther-Gray), while undertaking that inquiries would be made, declined to give any ruling on the matter himself; nor would he accept a motion that the Committee report

progress, on the ground that there would be little point in Mr. Lewis' complaint being considered by the House until the Serjeant-at-Arms had completed his enquiries.[3]

Several minutes later, after Major Anstruther-Gray's place in the Chair had been taken by the Deputy Chairman (Sir Rhys Hopkin-Morris), Mr. Lewis again attempted to raise the matter, and the Chair again declined to hear it until the report had been received from the Serjeant-at-Arms. After declining once again to accept a motion to report progress, the Deputy Chairman read to the Committee the following report from the Serjeant-at-Arms:

> Some 2,000 persons assembled outside St. Stephen's Entrance about 4.45 this afternoon with a view to seeing their Member of Parliament. They were, and still are, being admitted to the Central Lobby as space there permits, in accordance with the usual practice. Their behaviour inside and outside has been orderly.

The Deputy Chairman suggested that the matter should be raised at the appropriate time, and that the business of the Committee should be allowed to proceed. Several Members continued, however, to press for the immediate consideration of Mr. Lewis's complaint, and the Deputy Chairman finally ruled:

> Rightly or wrongly, I have declined to accept a Motion to report Progress. Hon. Members may or may not agree with me that that is the thing to do. A report has been presented. It shows no immediate urgency at all. In any event, if it did, it is not a matter for this Committee. I have already pointed out that the matter can be raised in other ways. I hope that it will not be debated any further and that the proceedings of the Committee may now be carried on. Hon. Members have redress in other forms. (475 *Hans.* cc. 470-5.)

Threats to member of the public communicating with Member.—On 17th March, during the course of a debate upon the Army Estimates, Mr. Driberg (Maldon) made reference to a question which he had addressed to the Secretary of State for War on a previous day, alleging unauthorised expenditure on a cocktail party at the Packway Mess, Larkhill. The information upon which the question was based had been sent to him by the Rev. J. P. Stevenson, the senior Chaplain of Larkhill Garrison. When inquiries had been made at Larkhill regarding the provenance of the information to Mr. Driberg, Mr. Stevenson had written to the Deputy Assistant Chaplain-General, Salisbury Plain District, informing him that he had provided it. The D.A.C.G. had then visited Mr. Stevenson, requesting him to write a letter to Mr. Driberg saying that he was satisfied that the information was untrue, "otherwise he would take such action as he thought fit". No such letter was written; Mr. Stevenson had thereafter been threatened by the D.A.C.G. that he would be posted away from Larkhill, and had been summoned for an interview with the G.O.C.-in-C., Southern Command.

Mr. Wigg (Dudley) suggested that the matter was one of Privi-

lege, and should be immediately raised as such, but the Deputy Speaker (Sir Rhys Hopkin-Morris) ruled that the matter could be raised with Mr. Speaker at the appropriate time, but not with himself in the middle of business; he also expressed the opinion that the matter had not been raised at the earliest opportunity.[5]

On 18th March Mr. Driberg accordingly raised the matter at the commencement of public business.

Mr. Speaker ruled:

It seems to me that in this instance this matter was not raised at the earliest possible opportunity. The letter on which the hon. Member for Maldon bases his complaint was dated 12th March. 'He gave us the circumstances, which might occur to any hon. Member, under which he did not, in fact, become aware of its contents until later in the afternoon of yesterday. I find, in referring to the Official Report of what transpired last night, that the hon. Member for Maldon, in dealing with this matter, after quoting the passage from the letter which begins

> "Without reference to me, Colonel Harrington then rang up my Deputy Assistant Chaplain-General and indicated that he wanted suitable action taken against me. The D.A.C.G. came to see me . . . and said that I was to expect a posting away from Larkhill in about a week's time,"

went on to say:

> "This morning I discussed the matter further by telephone with Mr. Stevenson, and I learned from him that the latest development is that he has been summoned for an interview either today or tomorrow—I am not quite sure which—with the Army Commander himself, the G.O.C.-in-C., Southern Command." . . .

. . . I have to take that into account and, applying the rule as I do, I cannot hold that the matter has been raised at the earliest possible moment. There may have been circumstances which prevented the hon. Member for Maldon from raising it, but we have to hold to the rule . . .

. . . There is this further point that had there been any question of an attempt to threaten the hon. Member for Maldon with any unpleasant consequences if he fulfilled his duty as a Member of this House in bringing the matter before the House, then the case would have been clear. But it seems to me a novel doctrine to rule on such short consideration that the Privilege of Parliament, as distinct from legal privilege, extends to every letter written by a member of the public to his Member of Parliament. That has never been, so far as I can find out in the time available to me, the doctrine of Privilege of this House.

Therefore, I cannot rule that in all the circumstances of this case I should be entitled to find that there was a *prima facie* case raised at the earliest possible moment which justified me in giving this matter priority over the Orders of the Day. That does not prevent the House, which is the final judge of its own Privileges, from considering the matter, and if the hon. Member for Maldon puts down a Motion to that effect for the consideration of the House, that procedure is open to him.

In response to observations by the Leader of the Opposition (Mr. Attlee) and Mr. Wigg, Mr. Speaker drew attention to previous decisions affecting communications by constituents to Members.[6] Emphasising the distinction between the legal privilege which the

courts may extend to a letter to a Member and the Privilege of Parliament, Mr. Speaker said that he felt bound to adhere to the ruling which he had given. He concluded by repeating that Mr. Driberg was perfectly free to put down a motion to test the opinion of the House on the matter.[7]

On 24th March the Leader of the House (Mr. Harry Crookshank), announcing the business for the forthcoming week, said:

> Perhaps, Mr. Speaker, I may also refer to the Motion on a Privilege matter standing on the Order Paper in the name of the hon. Member for Maldon (Mr. Driberg) and other hon. Members.
>
> [*That the complaint of the hon. Member for Maldon regarding the action of the Deputy Assistant Chaplain-General, Salisbury Plain District, in threatening the Reverend J. P. Stevenson, one of his subordinate chaplains, with a view to influencing proceedings in Parliament, be referred to the Committee of Privileges.*]
>
> I have considered this matter and suggest to the House that the Motion might well be agreed to without debate and referred to the Committee of Privileges. When the Committee has deliberated and made its Report, the House might then be in a better position to debate the matter should it wish to do so. If this proposal commends itself to the House, I will arrange for the Motion to be brought forward for discussion on an early day.[8]

On 28th March Mr. Driberg's motion was accordingly agreed to without debate.[9]

The Committee of Privileges reported[10] on 5th April, as follows:

> Your Committee have investigated the complaint referred to them and have come to the conclusion that no question of privilege or of contempt of this House is involved. The term "breach of privilege" is often now used as synonymous with "contempt", and while it is for the House to determine the limits of its jurisdiction, the House acts so far as possible in accordance with precedents in deciding whether or not certain conduct constitutes a breach of privilege or a contempt.
>
> Your Committee can find no precedent where an attempt by one individual to influence another individual (not a Member of Parliament) as to the nature or content of the latter's communications with a Member of Parliament has been treated as a breach of privilege or as a contempt of the House.
>
> Your Committee have reached the conclusion that the actions complained of are a matter for the competent minister. It has long been recognised that a member of the armed forces is entitled to communicate with Members of Parliament on other than military matters. Your Committee regard it as important that this right should be maintained and that members of the armed forces who communicate with Members of Parliament should not be subjected either to pressure or punishment on that account.
>
> Your Committee assume that the Secretary of State for War will inquire into all the circumstances of this case and take such action as may be necessary to ensure that this right is fully preserved.

No debate upon this Report took place in the House.

Alleged criticism of House by a newspaper.—On 6th December Mr. S. Silverman (Nelson and Colne) drew the attention of the House to a report published on 3rd December in the *Belfast Telegraph*, re-

lating to the disqualification of Mr. Charles Beattie for membership of the House of Commons (see pp. 59-72). The Chairman of the North Tyrone Unionist association was reported as saying that it was—

> disgraceful that a person who served the community in such a way should be pilloried over some legal quibble.

Mr. Silverman said that the only way in which Mr. Beattie had been "pilloried" was by the suggestion of the Leader of the House that the matter should be referred to a Select Committee, and remarked that this would appear to be the kind of criticism of Parliament and its officers which was usually held to be a *prima facie* breach of privilege.

Mr. Speaker ruled:

> There has evidently been a misunderstanding of the position by the person who is quoted in that article, but I do not think that it amounts *prima facie* to a breach of Privilege. If the hon. Member wishes to pursue it further on consideration, he can put down a motion to that effect for the judgment of the House, but my view, for what it is worth, is that it is not such a *prima facie* breach of Privilege which would justify me in giving the matter priority over the Orders of the Day.[11]

Allegations concerning personal morality of Members.—On Monday, 19th December, Lieut.-Colonel Lipton (Brixton) drew attention to the following extract from a recently published booklet by the British Medical Association entitled "Homosexuality and Prostitution":

> Other ways in which male homosexuals arouse the hostility of the public include their alleged tendency to place their loyalty to one another above their loyalty to the institution or government they serve, and, on the part of homosexuals in positions of authority, to give preferential treatment to homosexuals or to require homosexual subjection as expedient for promotion. The existence of practising homosexuals in the Church, Parliament, Civil Service, Forces, Press, radio, stage and other institutions constitutes a special problem.

He stated that although reports of this publication had appeared in the London morning papers on Friday, he had been unable to obtain a copy of the booklet itself before the House had met on that day. Mr. Speaker ruled:

> I have ascertained that the report of which the hon. and gallant Member complains was published on Wednesday, and extracts from it, including the passage complained of, certainly appeared in the Press on Friday morning. Therefore, by the rule, the hon. and gallant Gentleman ought to have produced it at the beginning of business on Friday in order to get precedence over the Orders of the Day. That does not, of course, in any way prevent him from putting down a Motion for the consideration of the House, which is the final guard of its own privileges.

Mr. Lipton then made a further complaint concerning a paragraph published the previous day in *The People*, which read:

Last night grave new disclosures were made by a famous doctor about vice in Parliament. They follow publication of a report on "practising homosexuals" at Westminster. The doctors who reported last week on the existence of "practising homosexuals" in Parliament knew of actual cases of homosexual members when they published their findings. This disclosure was made to *The People* yesterday by a well-known psychiatrist who was a member of the special committee of the Council of the British Medical Association which issued the report.

After he had handed the paper in, Mr. Speaker observed:

The hon. and gallant Member ought to have brought up the whole paper; he has brought me only a piece of it. That being the case and as I have just heard of this and had no opportunity to study it, I will rule for the moment that the hon. and gallant Member has raised this particular matter at the earliest possible moment and I shall reserve what I have to say on it until tomorrow.[12]

On the following day, before the commencement of public business, Mr. Speaker made the following statement:

Yesterday the hon. and gallant Member for Brixton (Lieut.-Colonel Lipton) drew the attention of the House to a matter contained in *The People*, the issue of Sunday last. He brought it forward without notice as a case of breach of Privilege. The hon. and gallant Member was asked to bring the paper up to the Table. To add to my surprise over the whole matter, he handed me not the whole paper, as the rules demand, but a cutting from it . . .

I was aware, of course, of the rule that the hon. and gallant Gentleman had unwittingly broken in bringing forward a cutting, which is not sufficient; but, if I may be frank with the House, I was so moved by the statement which he made and felt so much sympathy with it that I was anxious not to give a hasty decision if there were any way round the technical objection.

I have carefully considered the matter, however, in the interval and I find that it is a clear rule of the House that if any document is made the foundation for a complaint on Privilege, the whole document must be produced and not only a bit of it. The only advice I can give the hon. and gallant Member, therefore, is that he should put down a Motion on this matter. That in no way prejudices his chance of the matter being considered.

After several questions had been asked, Mr. Lipton asked Mr. Speaker if he would indicate what constituted a complete document, and, in particular, whether it was not sufficient to produce a large enough portion of the newspaper, including the words complained of, to make it clear that the words appeared in a specific issue of a specific newspaper. Mr. Speaker replied:

The hon. and gallant Gentleman could have found the answer to that in the erudite pages of Erskine May. It means the whole issue of the newspaper.[13]

2. Union of South Africa: House of Assembly

Contributed by the Clerk of the House of Assembly

Freedom of Speech.—During the session Mr. Speaker was approached and asked whether he was prepared to give permission to an hon. member who was to be subpœnaed in the case of *Jonker* v.

Cape Times to give evidence in court about remarks made by the hon. Member for Gardens (Dr. Jonker) and the latter's attitude on certain occasions in the course of debates in the House.

Mr. Speaker stated that, in view of the specific provisions of section *two* of the Powers and Privileges of Parliament Act, 1911, viz.:

> There shall be freedom of speech and debate or proceedings in Parliament and such freedom of speech and debate or proceedings shall not be liable to be impeached or questioned in any court or place out of Parliament,

it was not competent for him to give such permission. As the case was settled out of court, the question whether the evidence required to be given by the hon. member was privileged, was not decided by the court.

(It will be recalled that in the 1948 English case of *Braddock* v. *Tillotson* the court held that it could not hear evidence of what had happened in the House of Commons without the special leave of the Speaker of that House. Petitions from both parties were subsequently presented to the House praying for leave to be granted to certain members to give evidence in the case and leave was then granted by the House on motion made.[14])

INDIA: LOK SABHA

Contributed by the Secretary of the Lok Sabha

Imputation concerning integrity of Members.—On the 30th August, 1955, Shri Sarangadhar Das, Member of the Lok Sabha, raised a question of breach of privilege arising out of comments appearing in the *Daily Pratap*, an Urudu paper, dated the 26th August, 1955, concerning the debate in the Lok Sabha on the Report of the Press Commission. The portion of the article objected to was as under:

> But in the Lok Sabha some brave speeches were made with a view to impress on the Press reporters that they had no better well-wishers than the Members. It is said that the peasant's greeting is not without any purpose. These Members' speeches were not without objective either, and it is possible that these speeches were made for some consideration.

Shri Saranghar Das stated that the above passage, extracted from the proprietor's article, was an affront to the integrity of the Members who had participated in the discussions on the Press Commission's Report held on that day.

The Deputy Speaker observed that it was *prima facie* a case of contempt or breach of privilege of the House. But in view of the fact that the author of the article had published an unconditional apology in the *Pratap* dated the 29th August, 1955, it was not necessary to pursue the matter any further. The House agreed that the matter be dropped.[15]

INDIA: MADRAS LEGISLATIVE ASSEMBLY

Contributed by the Deputy Secretary of the Legislature

Definition of "precincts of the House".—As certain instances had come to notice of a magistrate issuing a bailable warrant against a member of the Assembly when the House was actually in session and a police constable trying to serve a summons on a member within the Assembly building when the House was actually sitting, the Speaker referred *suo motu* the question of the construction that should be put on the expression "precincts of the House", as regards the Madras Legislative Assembly, to a Committee of Privileges in view of the location of the Library, the Canteen and the Committee room in different places.

The Committee, after due consideration, arrived at the following decisions:

(1) "Precincts of the House" shall mean and include the entire Assembly buildings, the Ministers' rooms, the Library, the Canteen and the Committee room together with the verandas and steps to these buildings and the pathways leading from the Assembly Chamber to the other aforesaid buildings in respect of members and, as far as strangers are concerned, "precincts" means the Assembly Chamber including its verandas and steps.

(2) In so far as concerns persons summoned by a Committee of the House for any purpose whatsoever, they shall be deemed to be withir the precincts of the House so long as they are within the Committee Room, its verandas and its steps.

Proposed disciplinary action against an aided Elementary School Teacher for having close contact with top-ranking Communist Members of the Legislative Assembly.—On 20th August, 1955, Shri M. Kalyanasundaram, a member belonging to the Communist Party, raised a point of privilege—viz., that the proposal of the District Educational Officer, Salem, to take disciplinary action against an aided elementary school teacher for having close contact with top-ranking Communist leaders who were members of the Assembly was highly disparaging and calculated to bring down the prestige of the House in the estimation of the public and that it should be referred to a Committee of Privileges.

The Deputy-Speaker, who was in the Chair, ruled that the proposed disciplinary action against the aided school teacher was purely an administrative matter and that no *prima facie* case had been made out, as the question of privilege would arise only if a member had in any way been prevented from discharging his duties in the Assembly.[16]

Right of a leader of a party to take part in all debates.—On 29th November, 1955, Shri A. Ratnam raised a point of privilege, stating that he was the leader of the Scheduled Castes Federation and as such he was not given an opportunity to speak during the debate on

the Report of the States Reorganisation Commission, in spite of repeated requests to the Speaker.

The Speaker ruled that no member had an absolute right to speak on every subject. They were governed not merely by the time that they had to devote to each subject, but also by the time to be apportioned to each member, and as it was not possible to call on Shri A. Ratnam to speak on that particular day there was no question of breach of privilege at all.[17]

INDIA: UTTAR PRADESH LEGISLATIVE ASSEMBLY

Contributed by the Secretary

Reference in a Court of Justice to proceedings of the House.—A question was raised by Shri Narain Dutt Tewari, M.L.A., whether the proceedings of the House could be used or referred to in the order of the High Court in a case published in the *Amrita Bazar Patrika*, an English daily. A copy of the order of the High Court was obtained and it was ascertained that His Lordship Mr. Justice V. G. Oak had made an observation that the objector arranged for questions being put in the U.P. Legislative Assembly with respect to the delay in the investigation by the police, as the local police officers were under the influence of the accused. The proceedings in the Assembly were not sufficient for proving that the accused persons were men of influence.

It was decided that the course of proceedings of the Legislatures are to be taken judicial notice of by any court under section 57(4) of the Indian Evidence Act, and such documents are to be treated as public documents, and can be proved according to the provisions of section 78 of that Act. When the proceedings of the Houses of Legislatures are public documents of which judicial notice can be taken, their use in court cannot be treated as breach of privilege of the House. The matter was accordingly dropped.

Alleged contempt of the House by deceptive statement.—Shri Raj Narain, M.L.A., gave a notice of an adjournment motion on December 5, 1955, seeking to discuss the situation arising out of permission not being given to the Socialist Party of Jaunpur for using a loud speaker in their meeting. On the basis of the information given by the Chief Minister on the subject, the Speaker ruled out the motion as being indefinite and being a matter of local administration. On December 8, 1955, Shri Raj Narain alleged that the information given by the Chief Minister in connection with the said motion was false—and he wanted to give his personal explanation. The Speaker did not allow him time for this and said that the Member could raise a question of privilege if he thought that a lie had been told intentionally, and a decision would then be given.

Shri Raj Narain then raised a question of breach of privilege on the ground that by intentionally concealing the truth the Chief Minister

had been guilty of a contempt of the House and any contempt of the House was a breach of privilege of the House. The matter was examined, and the Speaker ruled that a *prima facie* case of breach of privilege did not arise, and the question was dropped.

KENYA

Contributed by the Clerk of the Legislative Council

Publication of document before presentation.—On 5th April, 1955, the question was raised as to whether the publication of the contents of a document due to be laid on the Table of Legislative Council before it had in fact been so laid constituted a breach of privilege. The case in point was investigated by the Deputy Speaker, who ruled that the disclosure was a *bona fide* mistake made without malice and as such did not constitute a breach of privilege. The newspaper concerned made a full and unqualified apology and the question was dropped.[18]

[1] 536 *Com. Hans.*, cc. 165-8. [2] *Ibid.*, cc. 168-76. [3] 546 *Com. Hans.*, cc. 460-5. [4] *Ibid.*, cc. 470-5. [5] 538 *Com. Hans.*, cc. 1568-73. [6] *See* THE TABLE, Vol. XXI, pp. 131-3; Vol. XXIII, pp. 133-4. [7] 538 *Com. Hans.*, cc. 1607-16. [8] *Ibid.*, cc. 2273-4. [9] 539 *Com. Hans.*, c. 165. [10] H.C. 112 (1954-55). [11] 547 *Com. Hans.*, cc. 202-4. [12] *Ibid.*, cc. 1660-2. [13] *Ibid.*, cc. 1858-62. [14] *See* THE TABLE, Vol. XVIII, p. 127. [15] *L.S. Deb.*, 30th August, 1955. [16] 26 *Madras L.A. Deb.*, 273-84. [17] 28 *Ibid.*, 612. [18] 65 *Kenya Hans.*, 2, 5-6.

XXI. MISCELLANEOUS NOTES

1. CONSTITUTIONAL

Western Samoa (Removal of Disqualifications for Membership of Legislative Assembly.—An Order by the Governor in Council, dated 10th May and entitled the Western Samoa Legislative Assembly Regulations, 1948, Amendment No. 2 (Serial No. 1955/56) provided that the receipt by a Member of the Legislative Assembly from the Samoan Treasury of payments in connection with

(*a*) his attendance at any meeting of the Working Committee on the Development Plan in respect of Western Samoa; or
(*b*) his attendance with the authority of the High Commissioner at any conference, meeting, or convention as a representative of the Legislative Assembly; or
(*c*) his travelling with the authority of the High Commissioner on any mission or business as a representative of the Legislative Assembly or in connection with the said Development Plan; or
(*d*) his attendance at any conference of the Commonwealth Parliamentary Association,

would not operate to his disqualification.

Union of South Africa (Constitutional Changes).—During the session the following changes were made to the Acts mentioned, viz.:

SOUTH AFRICA ACT, 1909:

Sections *twenty* (Sessions of Parliament), *twenty-four* (Original Constitution of Senate) and *twenty-five* (Subsequent Constitution of Senate): these sections were amended as follows:

Dissolution of Senate:

(1) The Senate was to be dissolved at any time before the 31st December, 1955, and all senators, except those elected under the Representation of Natives Act, 1936, but including those elected or nominated under the South-West Africa Affairs Amendment Act, 1949, were to vacate their seats. (The Senate was dissolved on 4th November, 1955.)

(2) The Senate may be dissolved within 120 days from the expiry of the term of a provincial council. Any such dissolution shall be deemed to be a dissolution of the Senate under the Senate Act, 1926.

Constitution of Senate:

The Senate was reconstituted to consist of—

(*a*) sixteen nominated senators;

(*b*) so many elected senators, but not less than eight, for each province as are equal (to the nearest figure) to one-fifth of the number of electoral divisions in that province for the election of members of the House of Assembly, together with the electoral divisions for the election of provincial councillors, making a total of sixty-five elected senators—*i.e.*, Cape Province, twenty-two; Orange Free State, eight; Natal, eight; and Transvaal, twenty-seven;

(*c*) four senators elected and nominated under the South-West Africa Affairs Amendment Act, 1949; and

(*d*) four senators elected under the Representation of Natives Act, 1936.

Nominated and elected Senators:

(1) Nominated and elected senators hold their seats for five years and vacate their seats upon dissolution of the Senate. (The provisions relating to the election and tenure of office of senators under the Representation of Natives Act, 1936, remain unaltered);

(2) One-half of the nominated senators to be selected

on the ground mainly of their thorough acquaintance with the reasonable wants and wishes of the coloured races;

(3) If the seat of a senator becomes vacant it is filled for the unexpired period only;

(4) Senators are elected by majority vote, each voter having one non-transferable vote for each senator to be elected. If two or more candidates for the same seat receive the same number of votes a re-election is forthwith held according to that principle of proportional representation under which each voter has one transferable vote. If they again receive the same number of votes, the election must be decided by the drawing of lots. (See Senate Act, No. 53 of 1955, sections *one*, *two*, *three*, *four*, *eight*, *nine* and *eleven*.)

Section *twenty-six* (Qualification of Senators): The property qualification for elected senators is abolished (see Senate Act, No. 53 of 1955, section *five*).

Section *thirty* (Quorum): The quorum of the Senate is made fifteen instead of twelve (see Senate Act, No. 53 of 1955, section *six*).

Section *sixty-three* (Disagreement between the two Houses): A new section was substituted for the section which provided for the holding of joint sittings of both Houses of Parliament to terminate disagreements with the Senate on a Bill passed by the House of Assembly.

The new section 63 provides that—

(1) If a Bill imposing taxation only or dealing with the appropriation of revenue or moneys for the public service (certified as such by Mr. Speaker) is passed by the House of Assembly in any session and the Senate in the same session rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, the Bill must, unless the House otherwise directs, be presented to the Governor-General for assent. When assented to, it becomes an Act of Parliament and is taken to have been duly passed by both Houses.

(2) If a Bill (other than a Bill referred to in paragraph (1)) is passed by the House of Assembly in two successive sessions (whether of the same Parliament or not, but not held in the same calendar year) and in each of those sessions the Senate rejects or fails to pass it or passes it with amendments to which the

House of Assembly will not agree, the Bill must, unless the House of Assembly otherwise directs, be presented to the Governor-General for assent. When assented to, it becomes an Act of Parliament and is taken to have been duly passed by both Houses. When such a Bill is presented to the Governor-General for assent, it must be certified by Mr. Speaker that the provisions of the section have been complied with.

A Bill is deemed to be the same Bill as a former Bill sent up to the Senate in the preceding session—

(*a*) if it is identical with the former Bill, or

(*b*) if it contains only such alterations as are certified by Mr. Speaker—

(i) to be necessary owing to the time which has elapsed since the date of the former Bill, or

(ii) to represent any amendments made by the Senate in the former Bill in the preceding session.

Any amendments certified by Mr. Speaker to have been made by the Senate in the second session and agreed to by the House of Assembly must be inserted in the Bill presented to the Governor-General.

The House of Assembly may, on the passage of such a Bill in the second session, suggest further amendments without inserting them in the Bill. Such amendments must be considered by the Senate, and, if agreed to, are regarded as amendments made by the Senate and agreed to by the House of Assembly. The exercise of this power by the House does not, however, affect the operation of this section if the Bill is rejected by the Senate. (See Senate Act, No. 53 of 1955, section *seven*.)

Section *one hundred and three* (Appeals to Appellate Division): Appeals from certain orders or judgments given by a single judge of the Eastern Districts Local Division of the Supreme Court must now be heard by that Local Division instead of by the Cape Provincial Division. (See General Law Amendment Act, No. 62 of 1955, section *five*.)

Section *one hundred and ten* (Quorum for hearing appeals): A new section is substituted in terms of which five judges of the Appeal Court constitute a quorum, except where the validity of an Act of Parliament is in question, when eleven judges form a quorum.

If one or more of the judges at any stage during the hearing of an appeal die, retire, become otherwise incapable of

acting or are absent, the hearing must proceed before the remaining judges and where the hearing was commenced before—

(*a*) five judges, the judgment of at least three of them; or
(*b*) eleven judges, the judgment of at least six of them,

who are in agreement, is the judgment of the Court. In any other case the appeal must be heard *de novo*.

The new section re-enacts the provision that a judge cannot sit in the hearing of an appeal against a judgment or order given in a case heard before him. (See Appellate Division Quorum Act, No. 27 of 1955, section *one*.)

Section *one hundred and thirty-four* (Method of voting for senators, etc.): All references in this section to the election of senators have been deleted. (See Senate Act, No. 53 of 1955, section *eight*.)

Section *one hundred and thirty-seven bis*. (Equality of use of official languages by provincial councils and local authorities): A new section is inserted which provides that all records, journals, proceedings, ordinances and notices of provincial councils and all notices, regulations and bye-laws of local authorities must be in both official languages. (See South Africa Act Amendment Act, No. 9 of 1955, section *one*.)

SOUTH-WEST AFRICA AFFAIRS AMENDMENT ACT (No. 23 of 1949): Section *thirty* (Representation of South-West Africa in the Senate):

(*a*) Nominated and elected senators hold their seats for five years and vacate their seats upon dissolution of the Senate. If the seat of a senator becomes vacant it is filled for the unexpired period only.
(*b*) Senators are elected by majority vote, each voter having one non-transferable vote for each senator to be elected. If two or more candidates for the same seat receive the same number of votes, a re-election is forthwith held according to that principle of proportional representation under which each voter has one transferable vote. If they again receive the same number of votes, the election is decided by the drawing of lots. (See Senate Act, No. 53 of 1955, section *ten*.)

(*Contributed by the Clerk of the House of Assembly*.)

South-West Africa (Powers of Administrator).—In terms of section 3(1) of the South-West Africa Constitution Act, 1925 (No. 42 of 1925),

the Administrator-in-Executive Committee shall carry on the administration of those matters in respect of which it is for the time being competent for the Assembly to make ordinances.

Section 1 of the Interpretation of Laws Amendment Proclamation, 1926 (No. 11 of 1926), reads:

Administrator, when used in relation to those matters in respect of which it is for the time being competent for the Assembly to make Ordinances, shall mean the Administrator-in-Executive Committee.

Under the provisions of these sections all powers, authority and functions under Ordinances passed by the Legislative Assembly must be exercised by the Administrator-in-Executive Committee. Before the 1949 amendment (Act 23 of 1949) of the South-West Africa Constitution Act no hardship was felt because the Administrator then had legislative powers and could of his own accord deal with certain matters. He then also had an Advisory Council. With the 1949 amendment, however, his legislative powers were taken away and the Advisory Council was abolished. He was, therefore, left without any powers and could not even dispose of such minor matters as the issue of a permit for the export of skins or the appointment of a native worker to the staff of a local authority without the Executive Committee in full session having taken a formal resolution on the matter.

During 1955 the South-West Africa Constitution Act was amended by the Union House of Assembly (The South-West Africa Constitution Amendment Act, 1955 (No. 26 of 1955), assented to by His Excellency the Governor-General on 5th May, 1955) to the effect that

the Administrator-in-Executive Committee may by resolution delegate to the Administrator, subject to such conditions as may be specified in the resolution, any power, authority or function vested in the Administrator-in-Executive Committee under the South-West Africa Constitution Act or any other law, and any power, authority or function exercised by the Administrator under such a delegation shall for all purposes be deemed to have been exercised by the Administrator-in-Executive Committee.

Section *two* of the Amendment Act quoted above empowers the Administrator to authorise the issue of two hundred thousand pounds, instead of twenty-five thousand pounds as heretofore, from the Territory Revenue Fund, which expenditure must be submitted to the Assembly for appropriation not later than its next ensuing session.

(*Contributed by the Clerk of the Legislative Assembly.*)

India (Formation of new States and alteration of existing States).—By the provisions of the Constitution (Fifth Amendment) Act, 1955, the proviso to Article 3 of the Constitution of India was so amended as not to make it incumbent on the President to ascertain the views of the State Legislatures in regard to a proposal to intro-

duce a bill for forming new states or altering the areas, boundaries or names of existing states, and to enable the President to prescribe a time within which any states consulted should convey to him their views with respect to the provisions of the bill referred to them.

(*Contributed by the Deputy Secretary to the Madras Legislature.*)

Uttar Pradesh: Legislative Assembly (Removal of Disqualifications).—The U.P. Legislative Members (Removal of Disqualifications) Act, 1955 (Act No. 16), was passed by the U.P. Legislative Assembly, whereby a Member of the Legislature can become a member of the State Insurance Corporation or Boards, Committees or Councils formed thereunder established under the Employees State Insurance Act, 1948, without being disqualified for being a member of the Legislature.

(*Contributed by the Secretary of the Legislative Assembly.*)

Pakistan (Appointment of Ministers).—Under s. 10 of the Government of India Act, 1935, there was no bar to the appointment of a person who was not a member of the Federal Legislature as a Minister of the Government of Pakistan, but such Minister could not hold office for more than ten consecutive months unless elected as a Member of the Federal Legislature. This section has since been substituted by a new section so as to provide that Ministers shall be appointed from amongst the Members of the Federal Legislature. (*Const. Ass. Deb.*, 21st September, 1954, pp. 499-502.)

(*Contributed by the Secretary of the National Assembly.*)

Pakistan (Boundaries of Provinces).—Under s. 290 of the Government of India Act, 1935, the powers to create new Provinces and to alter the boundaries of provinces vested in the Governor-General. The section has now been amended so as to transfer these powers to the Federal Legislature. (*Const. Ass. Deb.*, 13th July, 1954, pp. 205-11.)

(*Contributed by the Secretary of the National Assembly.*)

Pakistan (Membership of Second Constituent Assembly).—The number of Members of the Second Constituent Assembly, which was set up by the Governor-General's Order of 28th May (No. 12 of 1955), was raised to eighty.

(*Contributed by the Secretary of the National Assembly.*)

Aden (Composition of Legislative Council and Election of Unofficial Members).—The composition of the Legislative Council was amended by the Aden Colony (Amendment) Order in Council, 1955 (S.I., 1955, No. 1654), dated 28th October, 1955. Under s. 2 of the Order, the new Council consists of—

(*a*) the Governor as President;
(*b*) four *ex officio* Members;
(*c*) not more than five Nominated Official Members;

(*d*) not more than five Nominated Unofficial Members, of whom one shall be representative as far as practicable of the commercial interests of the Colony; and

(*e*) four Elected Members, of whom three shall represent electoral districts (by whatever name called) and one shall represent the Council of the Aden Municipality.

The Nominated Official Members are persons holding office of emolument under the Crown in the Colony; Nominated Unofficial Members, however, are precluded under s. 6 of the Order from holding such office. All Nominated Members hold their seat in the Council during Her Majesty's pleasure.

Under s. 5 of the Order, Elected Members must be male British subjects not less than twenty-one years of age, either born in the Colony or resident there for seven out of the ten years immediately previous to nomination. There is a financial qualification consisting of either (i) the ownership of immovable property in the Colony of not less than 1,500 s., (ii) the occupation of premises in the Colony of an annual value of not less than 250 s., or (iii) an average monthly income of not less than 200 s. in the year previous to nomination. The usual disqualifications are enforced.

The qualifications of electors are laid down in s. 2 of the Legislative Council Elections Ordinance, 1955 (Legal Supplement No. 1 to the Aden Colony Gazette Extraordinary No. 50 of 1st October, 1955); they are the same as those for Members, except that a British subject not born in the Colony is only required to have resided there for two out of the three years preceding his application for registration as an elector.

Nominations for the first General Election took place on 1st December (Government Notice No. 193 of 1955), and the Election was held on 15th December.

East Africa High Commission (Prolongation of Existence).—Under section 3 of the East Africa (High Commission) Order in Council, 1947 (as amended by section 3 of the East Africa (High Commission) Order in Council, 1951), Parts III and IV of the Order, by which the East Africa Central Legislative Assembly was constituted and provision was made for the making of laws by the East Africa High Commission and the Assembly (see THE TABLE, Vol. XVII, pp. 278-84), would have ceased to have effect on 31st December, 1955. The East Africa (High Commission) (Amendment No. 2) Order in Council, 1955 (S.I., 1955, No. 1818), made on 1st December, 1955, amended the East Africa (High Commission) Orders in Council, 1947 to 1955, so as to provide that Parts III and IV of the Order in Council of 1947 would remain in force until 31st December, 1959.

Federation of Malaya (Constitutional Amendment).—The Federation of Malaya Agreement, 1948 (see THE TABLE, Vol. XVII, pp. 267-77), was amended in June, 1955. The amendment was effected

by means of a Proclamation (No. 48 of 1955) and an amending Ordinance, the Federation of Malaya Agreement (Amendment) Ordinance, 1955 (No. 39 of 1955), and was the consequence of the adoption by the Legislative Council in May, 1955, of the recommendations of an *ad hoc* Committee appointed by His Excellency the High Commissioner to review the financial provisions of the Federation Agreement (*Leg. Co. Hansard,* 4th and 5th May, 1955, cc. 291-303).

The Report of this Committee (No. 29/1955) was mainly concerned with the search for a procedure to replace the annual "scramble" for available financial resources—the annual allocation of the revenues of the Federation as between the States and the Settlements comprising the Federation on the one hand, and as between those States and Settlements and the Federal Government on the other—and its subject-matter, while of the greatest interest to students of the financial aspects of federal government, is outside the scope of THE TABLE. Opportunity was, however, taken by the amending Ordinance also to make several other—relatively minor—amendments to the Constitution: one to authorise reprinting of the Federation Agreement as amended from time to time; another to vest the prerogative of pardon in the Ruler of the State (or in the High Commissioner where a Settlement is concerned) in which the offence was committed instead of, as hitherto, vesting it in the Ruler of the State (or the High Commissioner for a Settlement) in which the offence was tried; and the third to enable any State or Settlement, if it so wished, to appoint a Speaker to its Council. The date of coming into force of both the Proclamation and the Federation of Malaya Agreement (Amendment) Ordinance, 1955, was fixed as 1st January, 1956.

(*Contributed by the Clerk of the Legislative Council.*)

Nigeria (Power of Governor-General to Address the House of Representatives).—In virtue of Section 81(1) of the Nigerian (Constitution) Order in Council, 1954, reading as follows—

> The Governor-General may, in his discretion, address the House of Representatives or the House of Assembly of the Southern Cameroons at any time that he thinks fit, and may for that purpose require the attendance of members,

His Excellency the Governor-General, Sir James Robertson, addressed the House of Representatives at its sitting on Monday the 22nd August, 1955, five days after sittings were resumed (*Hans.*, pp. 171-5).

The Governor-General decided to come and address the House, to quote from his address,

> not because I have any special matter to lay before you, but because, as I hope you will agree, it is fitting that soon after my appointment as Governor-General of the Federation of Nigeria I should meet you formally and introduce

myself to you. Had I not chosen to come at this time to address you, I should not have had the opportunity of meeting you formally until I open the next Session of the House in some months' time. In view of the place which your House occupies in the Constitution, I think it would have been a mistake to wait until then.

His Excellency then went on to make some observations on the subject of Parliamentary Government, and a brief comment on the political scene. He concluded with observations on the country's need for men with the training for the more mechanical professions and trades, and the policy for the training of Nigerian men and women needed for all branches of the Civil Service.

(*Contributed by the Clerk of the House of Representatives.*)

Tanganyika (Alteration of composition of Legislative Council).—By the provision of the Tanganyika (Legislative Council) (Amendment) Order in Council, 1955 (S.I., 1955, No. 430), dated 17th March, 1955, the Legislative Council was enlarged so as to consist of 61 Members, presided over by the Speaker. The Government Bench of 31 Members was to be occupied by 8 *ex officio* members and 23 other Members, nominated by the Governor, consisting of 9 official and 14 (6 African, 4 European and 4 Asian) unofficial Members. The Representative Bench of 30 was to be occupied by 10 Europeans, 10 Asians and 10 Africans, of whom 27 were to represent constituencies and three such interests as the Governor might think fit. Although in the first place Representative Members were to be appointed by the Governor, provision was made for subsequent legislation authorising the election of such Members.

Trinidad and Tobago (Prolongation of life of Legislative Council).—By the provisions of the Trinidad and Tobago (Legislative Council—Extension of Duration) Order in Council, 1955 (S.I., 1955, No. 1397), made on 8th September, the maximum life of the existing Legislative Council was extended from five years to five years and eight months. The object of this was to give extra time for deciding whether the next general election could be held under the procedure of the proposed new Constitution (which will be described in a forthcoming Volume).

2. General Parliamentary Usage

House of Commons (Alteration to Official Report).—On 3rd February Mr. Wyatt (Birmingham, Aston), asked for a ruling on the extent to which alterations of substance were allowed to be made to the text of *Hansard*. He averred that on the previous day, in replying to a supplementary question of Mr. Wyatt's, the Under-Secretary of State for Air (Mr. George Ward) had said:

> I am dealing with the last point on a later Question. It is not quite true.

This had been reported in *Hansard* as:

I am dealing with the last points on a later Question. They are not correct. (536 *Hans.*, c. 1083.)

The effect of this alteration (which, he learned, had been made by a secretary of Mr. Ward) was to indicate that there was no truth in the whole of his supplementary question, instead of only part of it.

Mr. Ward admitted that his correction, although made in good faith, was liable to misinterpretation, and expressed his willingness to take full responsibility and apologise to the House, should it be considered that anything improper had taken place.

Mr. Speaker then ruled as follows:

The reporter did accept this correction, and I ought to state, for the guidance of the House and everybody else concerned, what is the rule of the House in this matter. Hon. Members are permitted to—and frequently do—correct the transcripts of the reports of their speeches. It is permissible to make a correction which improves the grammar, the syntax or, indeed, the clarity of what was actually said in the House. But let there be no mistake about the rule of the House in these matters. It is not permissible to make alterations in the transcript which materially alter the sense of what was said.

Having heard both sides in this matter, I think that in this case there was an error. If a reporter is in doubt—and there is sometimes a narrow line between what is an alteration affecting the expression, on the one hand, and an alteration which affects the sense, on the other—it is his duty to consult a sub-editor, or, if necessary, the Editor himself. That is the rule of the House in these cases. I find that the reporter accepted on his own responsibility a correction which was offered to him.

Perhaps I may explain to the House, in conclusion, that the reporter, who is an old servant of the House, is, unfortunately, absent to-day, because he has temporarily succumbed to the prevailing malady of influenza. I have no doubt that the germ of that complaint, which must be presumed to have been then incubating within him, affected his judgment in that particular instance.

I have said what I have said for the clear guidance of the House in these matters. It is a clear rule that is laid down. I think the House will agree that those who report our debates serve us, on the whole, very well.

Mr. Attlee (Walthamstow, West) then asked whether it might be inferred from this ruling that a Minister who felt that he had given an incorrect statement in answer to a Question ought to make the correction on the floor of the House. Mr. Speaker replied:

That is so, and I would make it perfectly clear, if I may, that the rule is precisely the same for Ministers as for other hon. Members of the House. (536 *Hans.*, cc. 1275-7.)

House of Commons (Ministerial disclosure of confidential conversation between Member and official).—On 14th December, in answering a supplementary question by Mrs. Castle (Blackburn), the Secretary of State for the Colonies (Mr. Lennox-Boyd) said:

To the hon. Lady may I say that, in that visit to Kenya which she so recently paid, she said to one of the senior officers of the Kenya Government that as it was difficult to get information in Parliament from time to time the

only thing to do was to hit out wildly and hope that some blows would strike their mark. I suggest that that is not a very proper line.

Mrs. Castle asked whether the Colonial Secretary was aware that he was quoting from private talks which she had had with the Attorney-General of Kenya; and Mr. Brockway (Eton and Slough), rising to a point of Order, asked whether it was not contrary to all the customs of the House for a member of the Government to quote a private conversation with a civil servant and then use it against the Member concerned. Mr. Speaker replied:

There is nothing in the practice of the House which governs the matter, but I hope this subject will be discussed with moderation on both sides.

After several further exchanges, Mrs. Castle intimated her intention of raising the matter on the adjournment. (547 *Hans.*, cc. 1175-8.)

On 19th December the Leader of the Opposition (Mr. Gaitskell), in a Question by private notice, asked the Prime Minister whether he would instruct Ministers that conversations between officers of their Department or Service and Members of the House were not to be made public except with the consent of the Member concernd. The Chancellor of the Exchequer (Mr. Butler), replying for the Prime Minister, said that the suggestion would be considered, that the impending adjournment debate could not be forestalled, and that he could not commit the Prime Minister to issuing a general instruction without time for further reflection. In reply to further questions, he agreed that the matter was one of importance, and that, in general, "it is quite a good thing, in these private matters, to obtain consent" (*ibid.*, cc. 1658-9).

On 21st December, during the debate on the Christmas Adjournment, Mrs. Castle brought up once again the matter of substance to which her original question had been related. In the course of his reply, Mr. Lennox-Boyd said:

Before addressing myself to the substance of the hon. Lady's remarks, there is a personal explanation which I should like to make. I quoted in the House last week a remark which I said that the hon. Lady had made to a senior officer in Kenya, and which she rightly recognised, I think, as perhaps being a remark which might or might not have been addressed to the Attorney-General of Kenya, with whom she had very long conversations. I made this statement in the House because of the concern of the House expressed by, among others, the Leader of the Opposition. Perhaps the House was concerned that it might be thought that no hon. Member of Parliament in the future might be free to talk to officers of colonial Governments without the risk of what they said being quoted without their foreknowledge in this House.

I think that, on reflection, there is a good deal to be said for that anxiety. I made a mistake in what I did and I am sorry that I should have occasioned this anxiety. I am sorry for any embarrassment that it might bring to the Attorney-General of Kenya, who, like all his distinguished counsellors, is only too glad that Members of Parliament and others should know about the work they are doing and help to get the whole picture into perspective. Members

need have no anxiety on this score in the future, so far as I am concerned. (*Ibid.*, c. 2045.)

New South Wales: Legislative Assembly (Postscript to Royal Tour).—On 31st August, 1954, at the commencement of the Second Sitting of the Fourth Session of the Thirty-seventh Parliament, Mr. Speaker announced to the House that Her Majesty The Queen had been graciously pleased to present, through The Honourable the Premier, to the Parliament of New South Wales, signed Portraits of Her Majesty and His Royal Highness The Duke of Edinburgh.

The Portraits have been placed on the wall of the lobby behind the Assembly Chamber over a bronze plaque bearing the following inscription:

> THESE PORTRAITS WERE PRESENTED BY HER MAJESTY QUEEN ELIZABETH II TO COMMEMORATE THE OPENING ON 4TH FEBRUARY, 1954, OF THE THIRD SESSION OF THE THIRTY-SEVENTH PARLIAMENT OF NEW SOUTH WALES, THIS BEING THE FIRST OCCASION ON WHICH THE SOVEREIGN OPENED AN AUSTRALIAN PARLIAMENT.

In addition to the above, in the New South Wales tradition of marking signal events, a "composite group photograph" of Members and Officers serving at the time of the Royal Opening, and surmounted by a Portrait (in colour) of The Queen, has been placed in a lobby.

(*Contributed by the Clerk of the Legislative Assembly.*)

Western Samoa (Attendance of Members of Committees).—On 23rd August a new clause was added to S.O. No. 29 providing that if, in the interval between any two meetings of the Legislative Assembly, any member of a Committee absented himself without leave of absence or good cause from three consecutive meetings of his committee, he should be deemed to have forfeited his seat on the committee, and an election to the vacancy so created might be held at the ensuing meeting of the Assembly. (*Hans.*, August Session, 1955, pp. 93-4.)

Uttar Pradesh: Legislative Assembly (Committee on Government Assurances).—On the recommendations of the Rules Revising Committee of the U.P. Legislative Assembly which was constituted in 1954, the Speaker has constituted a Committee on Government Assurances on 21st October, 1955, after taking the sense of the House. (U.P.L.A. *Proc.*, Vol. CLIX, p. 528.) The Committee is empowered to

scrutinise the assurances, promises, undertakings, etc., given by Ministers, from time to time, after its constitution, on the floor of the House and to report on:

(*a*) The extent to which such assurances, promises, undertakings, etc., have been implemented; and

(*b*) where implemented whether such implementation has taken place within the minimum time necessary for the purpose.

(*Contributed by the Secretary of the Legislative Assembly.*)

Nigeria: House of Representatives (Presentation of a Mace).—On 25th February, after the Second Session had been opened by an Address from the Throne by the Governor-General, the Serjeant-at-Arms reported that a Delegation, sent by the United Kingdom Branch of the Commonwealth Parliamentary Association to present a Mace to the Federal House of Representatives, Nigeria, was enquiring if the House would be pleased to receive them.

Leave was given for the Delegation (consisting of Rt. Hon. Walter Elliot, C.H., M.C., M.P., Rt. Hon. Arthur Creech Jones, M.P., Lord Geddes, Mr. John S. W. Arbuthnot, M.B.E., T.D., M.P., Mr. Richard Fort, M.P., Mr. Hervey Rhodes, D.F.C., M.P., Mr. Thomas E. Hubbard, M.P., and Mr. W. W. Hamilton, M.P.) to be received. Thereupon the members of the Delegation were admitted to the Bar, and the Mace, covered, was placed before the Delegation.

The Serjeant-at-Arms having uncovered the Mace, Mr. Elliot made a speech presenting the Mace to the House. The Serjeant-at-Arms then placed the Mace upon the Table of the House.

The Minister of Communications and Aviation, seconded by the Minister of Land, Mines and Power, moved, and (the Motion having been supported by Chief S. L. Akintola) it was *resolved, nemine contradicente,*

That this House expresses its gratitude to the United Kingdom Branch of the Commonwealth Parliamentary Association for the gift of a Mace, which will serve henceforward as the visible symbol in this House of the authority of Parliament and as a token of the friendship and goodwill between Britain and Nigeria.

The Delegation then withdrew. (V. and P., 2nd Sess., No. 1, p. 1; 1 *Hans.*, pp. 10-17.)

3. Privilege

Pakistan (Powers and Privileges of the Second Constituent Assembly).—The privileges, etc., of the Members of the first Constituent Assembly functioning as Federal Legislature were governed by sections 28 and 41 of the Government of India Act, 1935, which are reproduced below:

28.—(1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of . . . the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of (the Federal Legislature) shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(5) The provisions of sub-sections (1) and (2) of this section shall apply in

relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, (the Federal Legislature) as they apply in relation to members of the Legislature.

41.—(1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

In the second Constituent Assembly, however, the above sections were repealed and the privileges of Members are governed by section 4 of the Constituent Assembly (Proceedings and Privileges) Act, 1955. The section referred to above is as follows:

4.—(1) Subject to the provisions of the Government of India Act, 1935, in its application to the Federal Legislature and to the Rules of Procedure of the Assembly, there shall be freedom of speech in the Assembly.

(2) No member of the Assembly shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Assembly or in any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of the Assembly of any report, paper, votes or proceedings.

(3) The validity of any proceedings in the Assembly shall not be called in question on the ground of any alleged irregularity of procedure.

(4) No officer or other member of the Assembly in whom powers are vested by or under any law for regulating procedure or the conduct of business, or for maintaining order, in the Assembly shall be subject to the jurisdiction of any court in respect of the exercise by him of these powers.

(5) In other respects, the powers, privileges and immunities of the Assembly, and of the members and committees thereof, shall be those of the Commons House of the Parliament of the United Kingdom of Great Britain and Northern Ireland and of its members and committees at the date of commencement of this Act.

(6) The provisions of this section shall apply to persons who have the right to speak in, and otherwise to take part in, the proceedings of the Federal Legislature or any committee thereof, as they apply to members of the Assembly.

(7) This section shall apply to the Assembly when functioning under subsection (1) of section 8 of the Indian Independence Act, 1947, and when functioning as Federal Legislature, and sections 28 and 41 of the Government of India Act, 1935, shall be repealed.

(*Contributed by the Secretary of the National Assembly.*)

Federation of Malaya (Amendment of Privileges Ordinance).—On 8th June Assent was given to the Legislative Council (Privileges and Powers) (Amendment) Ordinance, 1955 (No. 24 of 1955), which amended certain provisions of the Legislative Council (Privileges and Powers) Ordinance, 1952 (No. 15 of 1952). The general object of the amendments is set forth in the following extract from the explanatory memorandum on the Bill:

Since the Legislative Council (Privileges and Powers) Ordinance, 1952, was passed, it has been the subject of discussion and correspondence with officials on the staff of the House of Commons who have suggested that certain provisions in the Ordinance appear to go further than the practice of the House

of Commons. As a result they have raised certain matters in which they think the Ordinance might with advantage be modified, and in the light of experience gained since the Ordinance was enacted, it is thought that the amendments contained in this Bill, most of which have emerged from the discussions and correspondence to which reference has been made, should now be introduced.

The principal amendments were as follows:

(1) S. 6 of the original Ordinance provided that a certificate by the Speaker or Clerk of Council, certifying that the privilege of the Council was involved, could stay any civil or criminal proceedings. This was repealed, for reasons described in the explanatory memorandum:

> Section 6 of the Ordinance appears to give the Council exclusive jurisdiction in respect of all its privileges, in a way that might preclude the Courts from considering any question which is directly covered by the provisions of the Ordinance. The House of Commons is not recognised as having an exclusive jurisdiction except in its power to commit for contempt; a power which is adequately covered by section 13 of the Ordinance. It had never been intended that the Legislative Council should claim any wider powers than those enjoyed by the House of Commons.

(2) An amendment to s. 10 of the original Ordinance placed a limit of $1,000 on fines which might be imposed for contempt.

(3) It was provided in s. 10 of the original Ordinance that "the wilful failure or refusal to obey any rule, order or resolution of the Legislative Council" and "any contempt from time to time set forth and declared to be such in any standing order of the Legislative Council" were punishable as contempts of the Council. Since these provisions conferred on the Council unlimited power to legislate by resolution, they were replaced by a provision citing as a contempt

> the wilful failure or refusal to obey any lawful order of the Legislative Council, whereby the Legislative Council is or is likely to be obstructed or impeded.

(4) Provisions regarding contempt incurred by premature publication of Reports of Committees, or unauthorised reports of proceedings of the Council (previously covered only by the Standing Orders), were inserted in the Ordinance, s. 10(m) and (n).

(5) Under s. 21 of the original Ordinance, no person could be found guilty of giving false evidence before the Council unless he had been "duly cautioned as to his liability to punishment under this section". Since, in many cases, this requirement would defeat the purpose of the provision, these words were deleted. In the same section a description of the offence in terms used in the Penal Code was substituted for the word "perjury".

(6) By amendments to s. 30 of the original Ordinance, the power of the Council to punish by imprisonment under warrant issued by the Speaker was restricted specifically to offences related to contempt; the total duration of such imprisonment, formerly determined by the session of the Council, was also restricted to sixty days.

(7) S. 33(2) of the original Ordinance provided that any Member claiming to be entitled to any House of Commons Privilege not expressly provided for in the Ordinance might be required by the Speaker to refer to the authority on which he based his claim. A new paragraph (3) added to this section a proviso that the Speaker

> may from time to time declare the authorities to which references may be made for the purposes of this section.

Mauritius (Privileges enjoyed by Extraordinary Members).—As a result of the privilege case reported in Volume XXIII (pp. 141-3), an amendment was made to the Legislative Council (Privileges, Immunities and Powers) Ordinance, 1953. The Amending Ordinance (No. 21 of 1955) was so drafted as to make it quite clear that an Extraordinary Member should enjoy the same privileges as an ordinary Member of the Legislative Council.

(*Contributed by the Clerk of the Legislative Council.*)

4. THE CHAIR

Union of South Africa: Senate (Appointment of temporary Chairman).—On 4th May an amendment was made to S.O. No. 207 permitting the President, in the absence of the Chairman of Committees, and the Chairman of Committees, when acting as Deputy President, in forming a Committee of the whole House and before leaving the Chair, to appoint any Member to act as Chairman of Committees.

Pakistan (Presiding Officers of the Second Constituent Assembly).—In the first Constituent Assembly two of its members were elected to preside over the proceedings of the Assembly who were respectively called "President" and "Deputy President". In the second Constituent Assembly, the terms "President" and "Deputy President" were replaced by the terms "Speaker" and "Deputy Speaker" by the Constituent Assembly (Officers) Act, 1955. Under sub-section (1) of section 2 of the said Act, two Members were respectively elected as its Speaker and Deputy Speaker.

The relevant section runs as follows:

> 2.—(1) The Constituent Assembly of Pakistan shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker falls vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(*Contributed by the Secretary of the National Assembly.*)

Northern Rhodesia (Interventions by the Chair).—On 30th November, the Speaker (Mr. T. S. Page, C.B.E., J.P.) drew attention to the previously existing practice whereby the presiding officer had always made his interventions sitting down, contrary to the accepted practice in the House of Commons and other Assemblies. Having observed that no explicit guidance on the point was given by S.R. &

O. 28(iv), which merely stated that when the Speaker or Chairman spoke, any Member speaking should immediately resume his seat, he said:

I was somewhat concerned while checking the *Hansard* of the last meeting to notice that on several occasions I had to ask a Member to sit down when I was speaking, but I realise that it is not always easy for Members to know I have intervened when I remain seated.

I feel sure that it will help Members to observe the rule if I make a practice of rising when intervening or putting a question, and I propose to do this in future. This will not, however, affect our Standing Rule 28(iv) should I at any time forget to rise.

(86 *Hans.*, cc. 8-9.)

5. Order

House of Commons (Provision of hat for Members raising points of Order during divisions).—On 8th December, during the course of a division, Mr. Harold Wilson (Huyton), seated and covered, asked the Speaker if he would direct the Serjeant-at-Arms to procure a new and, if possible, up-to-date hat for use in raising points of order during a division; the existing article, he averred, was at least fifty years old and in very bad condition.

Mr. Speaker replied that he would give instructions accordingly. (547 *Hans.*, cc. 602-3.)

Union of South Africa: Senate (Rules for Senators Speaking).—On 31st March an amendment was made to paragraph (h) of S.O. No. 147, restricting the prohibition of allusions to debates in the House of Assembly to debates of the current Session.

6. Procedure

House of Commons (Restrictions on Adjournment Motions).—On 29th April, on the motion for the adjournment of the House at the end of business, two separate subjects were debated; the discussion of both of them was punctuated by observations from the Chair concerning the rules of order relating to debate on adjournment motions.

In the first place, Mr. Peart (Workington) announced that he intended to raise the matter of television facilities in Cumberland, and was at once asked by the Deputy Speaker (Sir Rhys Hopkin-Morris) whether he had given notice of his intention, since no minister appeared to be present. On Mr. Peart informing him that notice had been given, but that the Minister would not be present owing to an important engagement, Mr. Deputy Speaker said:

I cannot stop the hon. Member, but I must point out to him that the practice has been deprecated from the Chair as not being in accordance with the best practices of the House.

Mr. Peart nevertheless began his speech, but was soon interrupted by a suggestion from the Chair that the matter which he was raising

was probably a matter of day-to-day administration within the British Broadcasting Corporation, and not the responsibility of the Postmaster-General. Mr. Peart replied:

With respect, Mr. Deputy Speaker, I was advised this morning when I raised this matter in relation to a Question which was ruled out by the Table that I could raise the matter on an Adjournment, and for that reason I claim the right now when by chance the proceedings in the House have finished rather early.

Mr. Deputy Speaker observed:

That just shows the difficulty of the practice. I am not able to answer the hon. Gentleman, but it does not appear to me that this is in order. I have very grave doubts whether the Postmaster-General is responsible. That is one of the advantages of having a Minister here, and in the absence of the Minister to say what his obligation is, I am unable to determine this issue.

On the conclusion of the discussion of this matter (without any ministerial reply) Mr. Follick (Loughborough) raised the matter of the institution of a decimal currency. After some exchanges relating to the likelihood of a ministerial reply, during which the Chair again observed that debate without such reply was to be deprecated, the Member was asked whether the matter was the responsibility of the Chancellor of the Exchequer, and replied:

When I brought in my Bill, the Chancellor of the Exchequer dealt with it.

The Chair then observed that the matter would need legislation, which could not be discussed on the adjournment; to this Mr. Follick replied that what he proposed to discuss was not a bill, but the advantages of introducing such a currency and the appointment of a Royal Commission to discuss the question, which had been the basis of a bill he had previously introduced. After considerable argument, during the course of which several other Members intervened, the Chair ruled:

Whatever form of currency it might be, we could not have it without legislation. . . . To ask for a Royal Commission, if it were not intended to legislate or that some action should follow upon the findings of the Royal Commission, would reduce discussion in the House to a farce.

Mr. Follick thereupon said that he would refrain from pursuing the matter further, and the motion for the adjournment was agreed to. (540 *Hans.*, cc. 1309-16.)

Pakistan (Limitation on number of Questions).—One amendment to the Pakistan Constituent Assembly (Legislature) Rules was made by the President, Constituent Assembly (Legislature) in May, 1954.

Sub-rule (iii) of Rule 8A of the Pakistan Constituent Assembly (Legislature) Rules provided that "not more than five questions asked by the same member shall be called for answer on any one day". There was, however, no limit to the number of questions of which notice could be given by a member for any one day. The

number of questions of which notice can now be given has been restricted by the substitution of the old sub-rule by a new one which is reproduced below:

8A (iii).—Not more than five questions for oral answer and five questions for written answer shall be given notice of by the same member for any one day.

(*Contributed by the Secretary of the National Assembly.*)

Northern Rhodesia (Adjournment of the Legislative Council).—(i) On 7th December, discussion arose as to whether the sitting of the Council should be suspended till five o'clock or adjourned till the next day. Mr. Speaker (Mr. T. S. Page, C.B.E., J.P.) expressed himself uncertain whether Members wished to adjourn or not, and, while making it clear that he had the power to adjourn the Council at any time, said that he did not wish to do this if it was going to upset the programme. A member thereupon formally moved that the Council adjourn until 9.30 a.m. the next day; the motion was agreed to. (86 *Hans.*, cc. 259-60.)

After Prayers on 8th December, Mr. Speaker made the following announcement:

Before we proceed with the Order of the Day there is one matter I would like to bring before hon. Members. I wish to refer to the difficult position of the Speaker when it is nearly one o'clock and the items on the Order Paper are not concluded. What occurred yesterday is an example. Our present Standing Rules and Orders do not help, but they do empower the Speaker to adjourn or suspend business at any time—Standing Rule and Order 10 (i) and (ii). Usually the Speaker gets a message which guides his action in this respect; this message being apparently the result of consultation between the leaders on both sides. Whether such consultations take place in every case the Speaker has no means of ascertaining, and, if no such consultation takes place, confusion may follow.

I would suggest to hon. Members, and I would point out that it is only a suggestion, not an attempt at a ruling or anything of the sort, but merely a suggestion, I would suggest to hon. Members that they consider putting into practice the proposals made by the Select Committee on Standing Orders with regard to daily adjournments, proposed Standing Orders 13 to 17.

In short, these proposals are:

> Council meets on the four sitting days at 10 a.m. till 1 p.m. If business is not completed on Tuesday and Thursday at 1 p.m., business will be suspended until 2.30 p.m. and continued, if necessary, till 6 p.m. On the other days the Council adjourns at one o'clock or when the business is completed, whichever is the earlier.

These suggestions would, I consider, help hon. Members in making their arrangements and be of very great help to the Chair. Hon. Members might consider this proposal and let me know in due course.

(*Ibid.*, cc. 261-2.)

(ii) On 15th December, at the conclusion of business, the acting Chief Secretary moved the adjournment of the Council until the next day. Mr. Speaker, announcing his intention to call upon an hon. Member to speak, said:

As far as this Council is concerned, I think it is rather an innovation for the motion to adjourn to be debated when the Order Paper has been completed. On the other hand we have the example of the House of Commons when there are occasions when the Order Paper is finished before the automatic time for adjournment and if a Member of the Government moves the adjournment a general debate may follow, being restricted, of course, in that no mention may be made of anything that will entail legislation.

I do not think that we can do better than on this occasion to follow the example of the House of Commons. I would remind hon. Members that we have no automatic adjournment precedent. I hope that Members will bear that in mind and that we should adjourn in reasonable time.

Mr. Speaker thereupon called Mr. Gaunt (Midland) who raised a matter arising from a reply given that morning to a supplementary question. After a short debate, the motion to adjourn the Council was agreed to. (*Ibid.*, cc. 620-3).

7. STANDING ORDERS

Union of South Africa: House of Assembly (Standing Rules and Orders).—On 6th June the Committee on Standing Rules and Orders reported that it had considered and adopted a proposal to give precedence to private members' business on Fridays, after the sixth sitting day, instead of on Tuesdays, and recommended—

(1) That the amendments to the Standing Orders scheduled in the Report be adopted;
(2) that Mr. Speaker be authorised to print a separate Appendix containing the amendments approved of and such consequential amendments as may be necessary; and
(3) that the amended Standing Orders take effect from 1st January, 1956.

Notice of objection to the adoption of the Report was given on 7th June by Mr. Hepple (Rosettenville) and the matter was consequently set down on the Order Paper for consideration. The Report was considered and adopted on the 22nd June. (V. and P., pp. 663-664, 675 and 780.)

In terms of the amended Standing Orders—

(1) Questions will continue to have precedence on Tuesdays and Fridays.
(2) Motions of private members have precedence—
    (*a*) on the first Tuesday after the commencement of the session, and
    (*b*) on Fridays, after the sixth sitting day.
(3) Orders of private members have precedence—
    (*a*) on the first Friday after the commencement of the session, and
    (*b*) on subsequent Fridays from four o'clock p.m. or earlier if motions are sooner disposed of. (If there are no

orders of private members, motions of private members will continue to have precedence.)

(4) On Tuesdays, after the sixth sitting day, Government business has precedence.

(5) On Fridays, after the sixth sitting day—

(*a*) the House meets at 10 a.m.; and

(*b*) Select Committees have leave to sit during the sittings of the House.

(*Contributed by the Clerk of the House of Assembly.*)

India: Lok Sabha (Amendments to Standing Orders).—A number of amendments were made by the Speaker on 4th January to the Rules of Procedure and Conduct of Business in the Lok Sabha (Gazette of India Extraordinary—Part 1, Section 1, No. 2, dated 4th January, 1956). The most important of these are as follows:

Precincts of the House: These are defined in Rule 2 to include the Chamber, the Lobbies, the Galleries and such other places as the Speaker may from time to time determine.

Procedure on Bills: (1) A new Rule 85A provides for the exclusion or removal from the list of pending notices of the notice of a bill identical to one already pending before the House, unless otherwise directed by the Speaker.

(2) An amendment to Rule 94 empowers the Speaker to authorise certain rights of a Member in charge of a bill to be assumed by another Member, in the event of the former's incapacity.

(3) It was previously provided by Rule 131 that even if an amendment to a bill had been made on consideration, a motion that the bill be passed could be moved on the same day unless objection was taken. An amendment to the Rule provided that such a motion must always be moved on a future day, unless allowed by the Speaker to be moved forthwith.

(4) An amendment to Rule 167 provided that only a simple majority was necessary for adopting the Short Title, the Enacting Formula and the Long Title of a bill.

Service of Ministers on Committees: Amendments to Rules 181, 265 and 278 excluded all Ministers from membership of the Committees on Petitions, Subordinate Legislation and Government Assurances respectively.

Committee on Estimates: An amendment to Rule 243 increased the maximum membership of the Committee from 25 to 30.

Privilege: New Rules 263A and 263B provided that no arrest should be made, or legal process, civil or criminal, served, within the precincts of the House without the Speaker's permission.

Strangers: Amendments to Rule 329 prohibited any applause directed towards strangers in the galleries, or any reference to them by Members speaking.

Suspension of a Member: An amendment to Rule 387 specified that a Member named by the Speaker should be suspended for a period not exceeding the remainder of the Session; the previous provision had been for the remainder of the Session in every case.

Bihar: Legislative Assembly (Adoption of new Rules of Procedure).—On 28th April the Legislative Assembly, under Article 208(1) of the Constitution, adopted new Rules of Procedure (L.A. 99) in substitution for those of the previous legislature as modified and adapted by Mr. Speaker under Article 208(2) of the Constitution. (*Bihar Leg. Ass. Proc.*, 28th April, 1955.)

The general form of the previous Rules was followed, with a number of additions. The more important of the latter, together with some amendments to the previous Rules, are briefly noted below.

Part V: General Rules of Procedure.—The rules to be observed by members present in the House but not speaking, in general conformity with those of the House of Commons, are laid down in Rule 28. A Member speaking is specifically prohibited from using the Governor's name for the purpose of influencing debate (Rule 32(2)(i)).

A similar procedure to that of the House of Commons is laid down for the withdrawal of motions (Rule 41).

If debate on any matter becomes unduly protracted, discretion is given to the Speaker, after taking the sense of the House, to fix the hour at which the debate shall conclude (Rule 43).

Provision is made for Ministerial statements, but without any questions being asked thereon at the time the statement is made (Rule 55).

A procedure is laid down for the vacation of the seats (unde Article 190 of the Constitution) of Members absent without permis sion for more than sixty days (Rule 64).

Rules 71-8 lay down the constitution and procedure of the Business Advisory Committee in relation to Allocation of Time Orders. Unlike the procedure set forth in S.O. No. 41(3) of the House of Commons, a half-hour debate is allowed on a motion to refer one of its reports back to the Committee.

Part VI: Questions.—The Speaker is given power to convert short-notice questions into starred or unstarred questions, and starred questions into unstarred questions (Rule 80). A number of additions are made to the Rule (84) relating to the form and contents of questions. Questions on matters "which are or have been the subject of controversy between the State Government and the Government of India" are confined to matters of fact (Rule 86).

Part X: Legislation.—Bills involving expenditure are to be accompanied by financial memoranda, and clauses involving expenditure are to be printed in thick type or italicised (Rule 115).

The maximum number of Members of a select committee on a Bill is raised from 15 to 21 Members, and the quorum changed from one-

half or 5 Members (whichever is the less) to one-third in all cases. Select Committees are empowered to appoint Sub-Committees to consider detailed aspects of any bill (Rule 121). Full power is given to send for persons, papers and records (Rule 122). Reports of Select Committees are no longer signed by all Members who have been present, but by the Chairman alone, although individual Members may record notes of dissent (Rule 123).

Conditions are laid down of the admissibility of amendments to bills (Rule 131), and the Speaker is given the power of selection (Rule 133).

Part XIV: Financial Business.—Debate on an Appropriation Bill is restricted to matters of public importance or administrative policy which have not already been raised on demands for individual grants (Rule 188). Procedure is laid down for the allotment of time to a Finance Bill (defined as "the Bill ordinarily introduced each year to give effect to the financial proposals of the Government for the next financial year") (Rule 189).

Part XV: Public Accounts Committee.—The Rules relating to the Public Accounts Committee (191-8) are considerably expanded. Its membership is increased from 13 to 17 (with a quorum of 6), and power is given to appoint sub-committees. The Committee is empowered to examine the accounts of autonomous and semi-autonomous bodies whose reports and accounts are required to be laid before the Legislature. Reports of the Committee on the State Appropriation Accounts must always be considered by the Assembly.

New Parts Added.—The following new Parts are added to the Rules: Part XVI (Rules for the Constitution of Committee on Estimates and its Functions) (Rule 199); Part XXII (Miscellaneous) which includes Rules relating to the duties of the Secretary (236), the tabling of papers quoted by Ministers (237), the power given to the Speaker to make regulations for election by single transferable vote (240) and the restriction of the use of the Chamber to the sittings of the House (241); Part XXIII (Committee on Subordinate Legislation) (Rules 242-253); and Part XXIV (Committee on Government Assurances) (Rules 254-258). In addition, the Part relating to Questions of Privilege (XIX: Rules 205-223) has been completely rewritten and expanded, so as to deal not only with the Committee of Privileges but also with the whole process of raising questions of privilege, the consideration of reports from the committee, and the form to be used by judges and magistrates in signifying to the Speaker news of the arrest, detention, etc., of Members.

Madras (Amendments to Standing Orders).—The following amendments to the Standing Orders were made in 1955:

Prorogation.—Rule 9 of the Madras Assembly and Council Rules as amended in 1954 provided that on the prorogation of a session, all pending notices and business should be carried over to the next session. In the working of this rule, it was found that the number of

questions and resolutions which did not lapse on prorogation were becoming unwieldly, and questions which were being answered on the floor of the House had also lost their topical interest. A number of non-official Bills which had been introduced but for which no notices for carrying them through the further stages had been received were also kept pending. The rule has therefore been so amended that on the prorogation of a session, all pending notices and business shall lapse except Bills which have been introduced, and that if a member in charge of a Bill made no motion regarding the same during two complete sessions, the Bill shall lapse.

Place of sitting of Select Committee.—Rule 99 of the Madras Assembly Rules and Rule 100 of the Madras Council Rules provided that a Select Committee should sit at the place fixed by the Governor as the place of session of the Assembly and that it might sit at any other place with the leave of the Assembly given on a motion made by a Minister. As this gave rise to practical difficulties in regard to holding meetings of Select Committees and other Committees to which the rules relating to Select Committees apply, the rule has been amended to enable these Committees to meet at a place outside the place of session of the Assembly (or Council) with the permission of the Speaker (or Chairman).

Committee on Estimates, Committee on Public Accounts and Committee on Subordinate Legislation.—As each Committee has to sit and act as one body and not as members belonging to different political parties, the reports have to be unanimous and therefore a rule has been added that there shall be no minute of dissent to the reports of these Committees (Assembly Rules 168A, 176A and 203A).

A specific rule also has been added to the rules relating to each of these Committees to the effect that the rules applicable to a Select Committee shall apply to the procedure to be followed by these Committees (Assembly Rules 170, 177B, and 205A).

Excess Grants.—The existing rule regarding supplementary or additional Demands has been amended so as to make it specifically applicable to Demands for Excess Grants also (Council Rule 153).

Committee on Government Assurances.—A new rule has been added empowering the Committee to require the attendance of persons or the production of papers or records considered necessary for the discharge of its duties (Council Rule 178A).

Amendment of Rules of Procedure.—The existing rule has been amended so that in the case of minor amendments the House may take them into consideration without reference to a Select Committee (Council Rule 188).

Associate membership of the Committee on Public Accounts and Committee on Estimates of the Madras Legislative Assembly.—Two new rules have been added to enable some members of the Council as may be prescribed by the Chairman to associate with the Public

Accounts Committee and the Committee on Estimates of the Assembly (Council Rules Nos. 179A and 179B).

(*Contributed by the Deputy Secretary to the Legislature.*)

PEPSU: Vidhan Sabha (Amendments to Rules of Procedure).—By a Notification (No. LA-II-6(7), 1955/22) dated 30th September, the Speaker of the Legislative Assembly made a number of amendments and additions to the Rules of Procedure and Conduct of Business. By a further Notification (No. LA-II-6(7), 1955/29) dated 13th November, the Rules, as amended, were re-numbered. The most important of the amendments made are as follows, reference to Rules being made in the new numbering:

Nomenclature.—The designation of the Legislative Assembly is changed to Vidhan Sabha (*passim*).

Roll of Members.—Provision is made for an official Roll, to be signed by each Member after taking the oath (Rule 4).

Questions.—A prescribed form is laid down for parliamentary questions, which must also be put down for a specified date (which the Speaker, at his discretion, is empowered to postpone) (Rule 31 and Appendix A). Provision is made for the withdrawal of questions (Rule 39). The minimum notice of questions is reduced from fifteen to ten days (Rule 33), although provision is made for "short notice questions", with the assent of the Speaker and the Minister concerned (Rule 41). The Speaker is empowered to consolidate into a single notice questions on the same subject by two or more Members (Rule 45).

Half an hour's discussion.—A period of half an hour after the conclusion of business may, at the Speaker's discretion, be allotted to the discussion on a matter of sufficient public importance which has been the subject of a recent question. There is no formal motion, nor can a vote be taken (Rule 47).

Privilege.—The whole procedure on Questions of Privilege, including the giving of notice (which is normally to be in writing, unless the Speaker is satisfied of the urgency of the matter), the constitution and procedure of the Committee of Privileges, the consideration of its Reports, and the intimation to the Speaker by a magistrate of the arrest of a Member, is laid down in detail (Rules 53-72).

Motions for discussion of matters before statutory tribunals.—These may not be made, although the Speaker may permit the raising of matters connected with the procedure and progress of such tribunals, if not prejudicial to the enquiry (Rule 82).

Conduct of Members not speaking.—The usual practices in this respect and in respect of Members' behaviour when the Chair is speaking are incorporated in the Rules (Rule 110).

Bills.—Bills involving expenditure are to be accompanied by a financial memorandum (Rule 121), and those involving delegation of legislative powers by an explanatory memorandum (Rule 122).

The usual conditions are laid down as to the admissibility of amendments to bills; discretion is given to the Speaker to determine the place at which an amendment is to be moved (Rule 140).

Bills seeking to replace Ordinances are to be accompanied by a statement explaining their necessity, and Ordinances embodying provisions of pending bills are to be laid on the Table at the earliest opportunity, also accompanied by an explanatory statement (Rule 152).

Finance.—Precise rules are laid down as to the form and admissibility of motions to reduce the amount of a demand, such a motion being known as a " disapproval of policy cut " (Rules 175 and 176). Debate on supplementary grants is confined to their precise content, and the policy underlying the original grants may not be canvassed in such debate (Rule 183).

Detailed provision is made regarding the duties, powers and composition of the Committees on Public Accounts (Rules 186-7) and Estimates (Rule 188).

Select Committees.—Two new Select Committees are set up—namely, the Committee on Subordinate Legislation (Rules 203-215), the Committee on Government Assurances (Rules 216-221), and provision is made for the appointment where necessary of committees of inquiry, to be known as Parliamentary Committees (Rules 222-248).

Miscellaneous Provisions.—Custody of all papers and records is entrusted to the Secretary of the Sabha (Rule 253). Residuary powers, not covered by the Rules, are delegated to the Speaker (Rule 254), and provision is made for the temporary suspension of rules on motion made by any Member with the consent of the Speaker (Rule 255).

Federation of Malaya (Amendments to Standing Orders).—(i) On 1st June a Report of the Standing Committee on Amendments to the Standing Rules and Orders (No. 52 of 1955) was laid upon the Table of the Legislative Assembly (*Hans.*, 1st June, 1955, c. 513).

In this report, certain amendments to Standing Rules and Orders were recommended in order to bring them into conformity with the recent amendments to the Federation of Malaya Agreement, 1948 (see THE TABLE, Vol. XXIII, pp. 113-8).

The Committee also expressed agreement with a suggestion that Mr. Speaker should be given discretion to allow or disallow debate on Reports of Committees which had been distributed less than seven days previously, and to which Members had therefore been unable to give careful study, and recommended an amendment to this effect to Rule 72.

It was also recommended that provision should be made for the carrying out during a dissolution of the duties of the Standing Committee on Finance by an Advisory Committee on Finance, consisting either of such persons as had signified their willingness to act, and had been appointed by resolution of the Council, or, if no such reso-

lution were made, of those persons who had been Members of the Standing Committee on Finance immediately before the dissolution. The Advisory Committee should cease to exist on the date on which the first poll of the new elections was taken. Amendments to Rules 112 and 113, and a new Rule 115, were drafted to this effect.

The Committee also recommended the revocation of sub-sections (1) and (2) of Rule 118A, which prohibited the publication by Members or other private persons of all or part of any Order Paper until after such Order Paper had been officially distributed, or the publication except in Council of any communication passing between Members and the Speaker or the Clerk in respect to the contents of any Order Paper.

The Amendments recommended by the Committee were agreed to on 2nd June. (*Hans.*, 2nd June, 1955, c. 641.)

(ii) On 30th August a list of Amendments proposed to the Standing Rules and Orders to provide for Ministers, Elected Members and a new Financial Procedure (No. 66 of 1955) was laid upon the Table by the Attorney-General. (2nd L.C. *Hans.*, 1st Sess., c. 12.)

Apart from drafting amendments substituting the word "Minister" for other terms no longer applicable, the amendments consisted of four new Standing Orders setting forth a new financial procedure, as follows:

Rule 106A provided for the yearly introduction of an Appropriation Bill, and its consideration after second reading in a Committee of the whole Council (to be called the Committee of Supply), to which power was given to discuss simultaneously the detailed Estimates upon which the Bill was founded. A maximum of five days was to be allotted to the deliberations of the Committee. It was also provided that two clear days' notice should be given of any proposed amendment to reduce a sum set out in a schedule to the bill, and that if several such amendments were proposed to the same sub-head or item, the amendment seeking a reduction to the smallest sum should be first proposed, and any amendment seeking to omit the item altogether should be last proposed. Motions to increase a sum could only be moved by a Minister. Debate on the question for each item to stand part of the schedule shall be confined to the policy of the service for which the money was to be provided.

Rule 110 provided that the Estimates should be laid before the introduction of the Appropriation Bill.

Provision was made in Rules 111A and 112 for requests by individual States or Settlements to the High Commissioner for further allocations of Federal funds to be referred to the Standing Committee on Finance either by the High Commissioner or by the Council.

On 31st August the Council, on the motion of the Financial Secretary, resolved:

that the amendments to Standing Rules and Orders set out in Council Paper No. 66 of 1955 be referred to the Committee on Standing Rules and Orders with

the request that the Committee report to the Council at the next meeting so that the Council may be in a position to adopt these amendments at that meeting with or without such modifications, if any, as the Committee may recommend. (2nd L.C. *Hans.*, 1st Sess., c. 46.)

The Report of the Committee (No. 80 of 1955) was laid upon the Table on 12th October (*Hans.*, 12th October, c. 62). Apart from proposing two drafting amendments, the Committee made the following observation:

> The provisions of paragraph (4) of the proposed Rule 106A were discussed at some length. The paragraph as drafted corresponds with the provisions in force in Singapore and elsewhere, but we considered whether it would not be advisable to give to Mr. Speaker a discretion to increase beyond five days the period allotted for the discussion of the Estimates and the Bill in the Committee of Supply. We came to the conclusion, however, that the balance of convenience probably lies with the provisions of the draft in its present form. As the Rule is drafted all Honourable Members know the maximum time which the debate can be expected to last, and this allows them to arrange their business outside the Council accordingly. If a discretion were left with Mr. Speaker to lengthen the debate at will, the uncertainty could cause inconvenience, particularly to out-station Members. It should also be borne in mind that it is always open to the Council as a whole to suspend Standing Rules and Orders under Rule 121 for the purpose of lengthening the debate in any particular set of circumstances. It is true that this does leave some element of uncertainty as to whether the debate will in fact be limited to five days, but it is a fundamental right which the Council as a whole must retain.

The Committee's Report was considered by the Council on 12th October, and the proposed amendments to the Standing Rules and Orders were agreed to. (2nd L.C. *Hans.*, 1st Sess., cc. 79-80).

8. Financial Procedure

South Australia (Public Works Standing Committee).—The Public Works Standing Committee Act Amendment Act (No. 8 of 1955) raised the limit of cost of the public works which are exempt from the operation of the principal Act. The Public Works Standing Committee Act previously provided that it shall not be lawful for any person to introduce into either House of Parliament any Bill—

(*a*) authorising the construction of any public work estimated to cost when complete more than thirty thousand pounds; or

(*b*) appropriating money for expenditure on any public work estimated to cost when complete more than thirty thousand pounds;

unless such public work has first been inquired into by the committee in manner provided by the Act. The amending Act lifted this figure of £30,000 to £100,000. The limit of £30,000 was fixed in 1927, since when "the cost of Government works has increased, on the average, by about 250 per cent."

(*Contributed by the Clerk of the House of Assembly.*)

Madhya Pradesh Vidhan Sabha (Committee of Public Accounts).—An amendment to the Standing Rules, dated 21st September (*vide* Secretariat Notification No. 9984, dated 20th September), provided that the Committee of Public Accounts, previously constituted each session, should in future be permanently constituted (Rule No. 147(1)).

Federation of Rhodesia and Nyasaland (Procedure in Committee of Supply).—Members have the right, in Committee of Supply, to question Ministers on the details of any item appearing in the estimates. While they may not move amendments to the estimates without notice, no notice is required of points to be raised in Committee. However well briefed on details, it is virtually impossible for Ministers to give satisfactory answers in all cases. It was generally felt that proceedings in Committee of Supply were often unsatisfactory from the point of view of both Ministers and Members. A new system was introduced during the year and met with considerable success.

Reinforcing an appeal by Ministers for informal notice of points to be raised in Committee, a circular was issued setting out the following details:

(1) The Votes which it was hoped to take on any particular day were shown in the order for the resumption in Committee of Supply on that day. This ensured that no Votes other than those enumerated were taken on that day.

(2) Containers were placed in a convenient place, each labelled with the title of a Minister. Beside each was a pencil and a supply of forms for setting out the items on which questions would be raised. Any Member who desired to raise a question could give notice by entering it on a form and placing the form in the appropriate container. The containers were cleared regularly three times a day by the Ministries concerned.

It should be emphasised that the fact that a Member had not given notice in this way did not preclude him from asking a question in Committee. But it did lay him open to a reproach from the Minister, and in practice very few questions were asked of which notice had not been given.

While only one question was proposed on each vote, the Chairman called for discussion Head by Head, in sequence through the Vote, and Members co-operated fully in this.

The effect of these arrangements was to make the whole course of Committee of Supply much more orderly than it had been; and to provide Members with more satisfactory and more detailed explanations. These improvements in practice were achieved without requiring any change in Standing Orders.

(*Contributed by the Clerk of the Federal Assembly.*)

Mauritius (Procedure for examination of Annual Estimates).—Following the adoption by the Legislative Council, on 22nd March,

of Report No. 1 of 1955 of the Committee on the Standing Orders and Rules of the Legislative Council, amendments were made to Standing Orders 60 and 89. The object of these amendments was to simplify the procedure for the examination of the Annual Estimates. Prior to their adoption, Estimates were first examined in detail in the Standing Finance Committee and again in Committee of the whole Council; under the new Standing Orders, they are examined in Committee of Supply, more or less in the same manner as in the House of Commons. The simplified procedure has reduced by more than half the time spent on the examination of the Estimates.

As a corollary to the institution of the Committee of Supply, a Public Accounts Committee was set up at the same time under a new Standing Order 96A.

(*Contributed by the Clerk of the Legislative Council.*)

9. Bills, Petitions, etc.

House of Lords ("Identical Bills").—In November, 1954, the Birmingham Corporation deposited a Petition for a Private Bill dealing with concessionary fares to be charged on the Corporation's transport system. (This Bill is mentioned in another connection in Volume XXIII, page 65.) On the dissolution of Parliament in the spring of 1955, this Bill, like all the other Private Bills then in progress, was carried over to the next Parliament, which opened in June, 1955. The Bill was eventually thrown out by a Select Committee of the House of Lords on the 21st July, 1955. In view of the recent dissolution, there was no prorogation in the autumn of 1955; but the ordinary crop of Private Bills began their course in the normal way on the 27th November. The Birmingham Corporation wished once more to promote their Bill on concessionary fares; but since it would have been the same Bill as had been thrown out by the Lords in the same session, they were informed, on behalf of the Lord Chairman of Committees, that the House would probably not accept the Bill on this ground alone, regardless of its merits. The view was taken that, although it was through no fault of the Birmingham Corporation that July and November, 1955, were, contrary to the usual practice, in the same session, yet the previous Bill had been preserved from one Parliament to the next by special dispensation of the two Houses for the benefit of that Corporation, among others. On balance, therefore, it was held that the Corporation was not entitled to a waiver of the rule against the introduction of a Bill identical with one already rejected in the same session. Incidentally, the application of this rule, which is relatively rare, in all likelihood saved the City of Birmingham both trouble and money, since three other Bills, substantially the same as that proposed by Birmingham, were promoted by other local authorities in November, 1955, and failed.

Union of South Africa: House of Assembly (Select Committees).—(1) *General.*—Apart from the usual House and Sessional Committees, eight other Select Committees were appointed. Of the latter four were on Public Bills which had been considered by Select Committees during the previous session but in regard to which the enquiries had not been completed. One committee was appointed on the subject of a Public Bill which had been considered by a Select Committee in 1952, and one on the subject of two Public Bills which had been referred to Select Committees during the 1946-47, 1947 and 1948 sessions. The remaining two were Select Committees on Consolidating Bills appointed in terms of the new procedure laid down in Standing Order No. 186. Three of the committees reported to the House at the end of the session that they had been unable to complete their enquiries.

(2) *Scope of enquiry on Bill referred to Select Committee after Second Reading.*—On the first day of hearing evidence by the Select Committee on the Industrial Conciliation Bill, appointed at the end of the previous session and re-appointed in 1955, the question arose as to the admissibility of certain questions and the replies thereto. At the next meeting the Chairman, during the examination of witnesses, gave the following ruling:

> The Industrial Conciliation Bill now under consideration by this Committee has been read a Second Time and consequently its principles such as, for instance, the protection of white workers, job reservation and apartheid in trade unions have been accepted by the House. In regard to the examination of witnesses, I want to point out that I cannot allow any evidence to be adduced before the Committee or any questions to be asked by members which seek to elicit from witnesses proposals which are either in conflict with or destructive of the principles of the Bill as read a Second Time. It is of course very difficult for me at this stage to say exactly what questions should or should not be asked, but if I consider that a particular question falls outside the scope of the Committee's enquiry, I shall immediately inform the member concerned. For the information of members, however, I want to add that I shall allow questions regarding the effect of the application of the principles contained in the Bill to industry." (S.C. 3—'55, p. x.)

(*Contributed by the Clerk of the House of Assembly.*)

India: Lok Sabha (Speaker's inherent power not to put a Clause to the House).—It is the inherent power of the Speaker to admit or reject a notice or, even if he has admitted a notice, to refuse to place the matter before the House or to put a question to the vote of the House. This power is necessary for the smooth and efficient conduct of business in Parliament and for keeping the high dignity of the House. This inherent power of the Speaker under our Constitution and Rules of Procedure is apparent when we consider Rule 17A of the Indian Legislative Rules by which the Central Legislative Assembly was governed before independence.

The aforesaid rule reads as follows:

17A. Notwithstanding anything contained in rule 15 or rule 17, the President shall not have or exercise any power to prevent or delay the making or discussion of any motion relating to a Bill made by the Member in charge of the Bill or to refuse to put, or delay the putting of, the question on any such motion, unless such power is expressly conferred upon him by, or such motion or discussion or the putting of such question, as the case may be, is expressly prohibited or indirectly precluded by, any provision of the Act, the Government of India Act, these Rules or the Standing Orders.

It will thus be seen that the then Governor-General had to make a rule expressly prohibiting the President of the Central Assembly from exercising the otherwise inherent powers in him, even though the then Assembly was not sovereign and was a pale shadow of the present House. Such a rule will be now out of place in the Rules of Procedure of a sovereign House.

It is interesting to note here that this rule was introduced by the Governor-General after President Patel had claimed the inherent power referred to above in the case of the Public Safety Bill when he ruled out of order the motion for the consideration of the Bill. President Patel then stated as follows:

. . . I am of opinion that, although power to rule this motion out of order is not expressed in so many words in any of the Rules and Standing Orders, it does arise by necessary implication and analogy, and I am further satisfied that, in any case, the Chair has the inherent power to rule out a motion on the ground that it involves an abuse of the forms and procedure of this House as this motion, I hold, does. I therefore rule it out of order. (*Legislative Assembly Debates*, 11th April, 1929, p. 2991.)

A question arises whether, when a Bill has been introduced and taken into consideration, a clause thereof can be withdrawn by the Member-in-Charge. Sub-rule (1) of Rule 126 of the Rules of Procedure and Conduct of Business in the Lok Sabha provides as follows:

126.—(1) Notwithstanding anything in these rules, the Speaker may, when a motion that a Bill be taken into consideration has been carried, submit the Bill, or any part of the Bill, to the House clause by clause. The Speaker may call each clause separately, and, when the amendments relating to it have been dealt with, shall put the question: "That this clause (or, as the case may be, that this clause as amended) stand part of the Bill.

Further, rule 127 says that:

127. The Speaker may, if he thinks fit, postpone the consideration of a clause.

On a careful reading of these two rules, it is clear that the rules have given power to the Speaker to submit the Bill as a whole or a part of it to the House or postpone a clause, and have given him the option to call each clause separately. The option to the Speaker to call a clause is therefore consistent with his inherent powers to place a

clause and/or put it to the vote of the House. It therefore follows that the Speaker may, when exercising his inherent powers in placing a clause before the House or having placed a clause before the House, not put it to the vote of the House.

During the discussion on the Representation of the People (Amendment) Bill, on 21st December, 1950, a question arose as to whether a Minister-in-Charge of the Bill could withdraw a particular clause. The Speaker, Shri G. V. Mavalankar, suggested that to save the time of the House, he need not as well put the clause to the House.

A Member then suggested that if the Member-in-Charge did not want the clause to be part of the Bill, the latter might seek its withdrawal formally. The Speaker stated that the Bill was introduced as a whole and every clause was before the House. The Member could not withdraw a clause after having placed the whole Bill before the House. The Speaker, therefore, ruled out the procedure of withdrawing a clause by the Member-in-Charge because the whole Bill was before the House and a part thereof, in the shape of a clause or clauses, could not be withdrawn. (*Parl. Deb.*, 21st December, 1950, cc. 2214-5.)

Normally, whenever a clause has to be omitted from a Bill, it is put to the vote of the House and negatived. An amendment to omit the clause is not in order since the motion before the House always is that a clause stands part of the Bill. It is only when this motion is adopted that a clause stands part of the Bill.

(*Contributed by S. L. Shakdher, Joint Secretary, Lok Sabha Secretariat.*)

Federation of Rhodesia and Nyasaland (Clerical error discovered in Bill after Third Reading).—Standing Order No. 147 states:

> Upon the discovery of any clerical error in any Bill after it has passed, but before it has been presented to the Governor-General for assent, Mr. Speaker shall report such error to the House, and it shall thereupon be dealt with as any other amendment.

Minor drafting errors having been discovered in a Bill under the circumstances set out in the standing order, Mr. Speaker reported the matter to the House, and directed that the Bill be re-committed for the purpose of considering proposed amendments to correct the errors (1955 *Votes*, 103, 117). The Committee was set down for a future day, on which the necessary amendments were made, the amended Bill duly reported, and read the third time.

(*Contributed by the Clerk of the Federal Assembly.*)

Federation of Rhodesia and Nyasaland (Printing error in a Bill).—A Bill duly passed was assented to and became Act No. 16 of 1955. Subsequently it was discovered that all prints were not identical and that the copy signed by the Governor-General contained an error.

Investigation proved that the type had been inadvertently damaged during printing and the damaged portion replaced without normal procedures regarding re-proofing being followed.

As a result, a special Bill "to provide for the lawful operation of the Customs and Excise Act, 1955, notwithstanding the existence of printing errors in certain copies of the said Act", had to be passed at the next session. (Act 21, 1955.)

(*Contributed by the Clerk of the Federal Assembly.*)

10. ELECTORAL

House of Commons (Miscarriage of an Election Return).—On 9th June, the opening day of a new Parliament, Mr. Speaker read to the House a statutory declaration that he had received from the Deputy Acting Returning Officer to the Knutsford constituency, in which it was stated:

THAT the Member duly elected for the Constituency of Knutsford in pursuance of the said Writ was Lieutenant-Colonel Walter Henry Bromley-Davenport, T.D., of Capesthorn, Macclesfield, in the County of Chester.

THAT pursuant to the said election I did on Friday, the 27th day of May, 1955, duly endorse the certificate on the said Writ with the name of the said Lieutenant-Colonel Walter Henry Bromley-Davenport.

IN accordance with previous practice, I thereupon telephoned the principal post office at Wilmslow (through which post office all the post connected with this election and previous parliamentary elections for Knutsford had been sent) and asked to speak to the Postmaster. In his absence I spoke to his deputy and warned him that I would be sending my clerk with an envelope containing the Election Writ and Return to his post office and that I would require a receipt therefor.

AT or about 4.30 p.m. on that day an envelope containing the Writ and Return, marked "Election Writ and Return" and addressed to "The Clerk to the Crown, Crown Office in Chancery, Whitehall, London, S.W.1" was handed in by my clerk at the said post office and a receipt obtained for it, which receipt is now produced and shown to me marked "A" and is exhibited to this Statutory Declaration.

The Parliamentary Secretary to the Treasury (Mr. Buchan-Hepburn) then moved:

That it be an Instruction to the Clerk of the Crown that he do receive the name mentioned in the Statutory Declaration made by John Herwald Morris, Esquire, as Deputy Acting Returning Officer at the last Election for the Knutsford Constituency as if it had been endorsed upon the Writ as of the Member returned to serve in this present Parliament for Knutsford; and that he do attend this House forthwith to amend his Certificate to the House accordingly.

On being asked by Mr. Shinwell (Easington) whether the matter was not one for an inquiry by a Select Committee or even a Royal Commission, Mr. Speaker said:

The procedure which so far has been followed is laid down by Statute. For such an event as this, involving the unfortunate loss in transmission of the

Return of an hon. Member to this House, there has been a precedent, but the last one was before my time, in 1911, since when, I believe, there has been no similar case. I have myself examined the procedure followed and it is quite in accordance with the Statute passed by this House.

Mr. Shinwell then asked whether the Member in question was entitled to take the oath, to which Mr. Speaker replied:

The hon. and gallant Member for Knutsford (Lieut.-Colonel Bromley-Davenport) would not be entitled to take the Oath until the Certificate of the Clerk of the Crown to this House has been amended showing that he is, in fact, the Member duly elected at the election. The Motion now before the House is to call upon the Clerk of the Crown here to attend and amend his Certificate so that the name of the hon. and gallant Member for Knutsford appears thereon. When it does appear thereon, the hon. and gallant Member is entitled to be sworn like any other hon. Member.

The Motion was agreed to, and Colonel Bromley-Davenport was accordingly sworn. (542, *Hans.*, cc. 36-8.)

On 20th June, the Attorney-General informed the House that the missing election return had now been found, and that the reason for the delay appeared to have been the failure of the sub-post office to register the return, a procedure which Post Office rules required to be applied to all communications marked "Election Writ and Return". (*Ibid.*, cc. 1039-42.)

Australian Commonwealth (Redistribution of Seats).—Following an Australian-wide population census taken on the 30th June, 1954, a determination was made by the Chief Electoral Officer of the number of Members of the House of Representatives to be chosen in the several States of the Commonwealth (Parliamentary Paper No. 43 of Session 1954-55). The effect of this determination was to increase the total membership of the House by one, and to vary the State representation as follows:

State.	*Existing representation.*	*Representation under new determination.*
New South Wales	47	46
Victoria	33	33
Queensland	18	18
South Australia	10	11
Western Australia	8	9
Tasmania	5	5
	121	122

Distribution Commissioners were appointed in respect of each State and their recommendations involving alterations of electorate boundaries and, in some cases, names of electorates were in due course presented to both the Senate and the House of Representatives.

Motions approving the proposed re-distributions were subsequently agreed to by each House (Senate: Journals, Session 1954-55, pp. 151-2, 156-7; House of Representatives: V. and P., Session 1954-55, pp. 238-9, 242-3, 248-50) and the new boundaries operated in respect of the General Election for the House of Representatives held on the 10th December, 1955.

(*Contributed by the Clerk of the House of Representatives.*)

New South Wales (Elections to Legislative Council).—The Regulations made under the Constitution (Legislative Council Elections) Act, 1932-37, and published in the Government Gazette No. 99 of 9th September, provided that where the seats of more than one and less than fifteen Council Members had become vacant, and the number of candidates in the ensuing election was more than twice the number of vacancies, the ballot paper should contain a statement reminding the elector that he was required, under s. 19 of the Act, to mark at least twice as many preferences as there were vacancies. Should the number of candidates be less than twice the number of vacancies, a similar statement should remind the elector that he was required to express a preference for all the candidates.

These regulations repaired an omission in previous regulations (published in Government Gazette No. 83 of 6th August, 1943) which had prescribed the form of statement to be used in elections for fifteen vacancies and one vacancy respectively.

South Australia (Electoral Provisions).—The Electoral Act Amendment Act (No. 52 of 1955) made a number of minor amendments to the Electoral law, including provisions dealing with prohibition of certain electoral posters, electoral expenditure, informal ballot papers and other matters.

(*Contributed by the Clerk of the House of Assembly.*)

South Australia: House of Assembly (Redivision of Electoral Districts).—The Constitution Act Amendment Act (No. 59 of 1955) provides mainly for the redivision of the House of Assembly districts in South Australia. The number of Members of Parliament remains unchanged—twenty in the Legislative Council and thirty-nine in the House of Assembly.

The basis of the Act is the report of Electoral Commission appointed pursuant to the Electoral Districts (Redivision) Act (No. 37 of 1954). The Commission's main task was to redivide the Adelaide metropolitan area into thirteen approximately equal Assembly districts and to redivide the country areas into twenty-six approximately equal Assembly districts. The number of districts in the metropolitan and country areas, respectively, was to remain unchanged.

In addition, the Commission, in pursuance of its statutory powers, recommended some variation in the composition of the Legislative Council districts, which consist of a number of Assembly districts.

The Constitution Act was amended to incorporate the recommendations of the Electoral Commission, the redivision of the State into new Assembly districts calling for new names for the electorates in some cases. The Act was to be operative in elections held after the first dissolution or expiration of the present House of Assembly.

(*Contributed by the Clerk of the House of Assembly.*)

Tasmania (Electoral Procedure).—The Electoral Act, 1955 (No. 41 of 1955), amended the provisions of the principal Act in respect of the preparation of electoral rolls, authorised witnesses and postal voting.

(*Contributed by the Clerk of the Legislative Council.*)

Western Australia (Electoral Amendments).—The Constitution Acts Amendment Act (No. 34 of 1955), which was introduced into the Legislative Council by a private member, permits an immigrant, on being naturalised, to immediately become an elector for the Legislative Council provided he has the requisite qualifications.

A further amendment brings the parent Act into line with the Native Welfare Act which provides that any aboriginal native of Australia who has served in the armed forces shall be deemed to be no longer a native and would therefore be entitled to be enrolled as an elector for the Legislative Assembly.

There was also a redistribution of Legislative Assembly seats under the provisions of the Electoral Districts Act, 1947. This resulted in the number of seats in the Agricultural, Mining and Pastoral areas being reduced by one to twenty-six, and an additional seat being created in the metropolitan area, the number now being twenty-one. The North-West area retains three seats.

No new legislation was involved.

(*Contributed by the Clerk of the Legislative Council.*)

II. Emoluments and Amenities

Australia: House of Representatives (Members' Parliamentary Retiring Allowances).—An Act (No. 30 of 1955) in amendment of the Parliamentary Retiring Allowances Act effected the following changes in the scheme of pensions for ex-members:

(*a*) Contributions by Members were increased from £3 to £4 10s. per week.
(*b*) The basic retiring allowance of £8 per week to an ex-member was increased to £12 per week.
(*c*) The additional allowance of £2 per week to an ex-member of sixty-five years of age or older was increased to £3 per week.
(*d*) The basic retiring allowance of £5 per week to the widow of an ex-member was increased to £10 per week.
(*e*) The additional allowance of £1 5s. per week to the widow as

from the date on which ex-member would have reached the age of sixty-five years was discontinued.

(*f*) Eligibility for a retiring allowance, which formerly was limited to a member whose period of service was not less than eight years, was extended to include a member whose period of service was less than eight years, provided he had been affected for a third time by the dissolution or expiration of the House of which he was a Member, or upon the expiration of his office. (1955 *Hans.*, 1415-6: see also THE TABLE, Vol. XXI, p. 65.)

(*Contributed by the Clerk of the House of Representatives.*)

New South Wales (Long Service Leave to Public Servants).—The Public Service and Other Statutory Bodies (Long Service Leave) Act, 1955 (No. 27 of 1955), amended the provisions governing long service leave throughout the Public Service. S. 2 of the Act provided that an officer with at least ten and less than fifteen years' service, whose service was terminated by reasons of retrenchment or compulsory retirement owing to age or incapability outside his own control, was entitled for ten years' service to two months' leave on full pay, and for service after ten years to a proportionate amount in relation to the length of such service. The money value of any such leave not taken or completed on account of death was made payable to the officer's widow.

The provisions governing long service leave throughout the Public Service are normally applied to the Legislative Council staff on application to the Executive Government by the President.

(*Contributed by the Clerk of the Parliaments.*)

New South Wales: Legislative Assembly (Superannuation).—By the provisions of the Legislative Assembly Members Superannuation (Amendment) Act, 1954 (No. 47 of 1954), assented to on 16th December, 1954, the annual contribution required to be made by Members of the Legislative Assembly to the Superannuation Fund was increased from £117 to £156. Pension rates of persons qualifying for pension after the commencement of the Act were raised in the following degrees:

(*a*) For Members with an aggregate period of service of fifteen years or more—from £9 to £12 per week.

(*b*) For Members with a lesser aggregate period, but who had been Members of three Parliaments—from £7 10s. to £10 per week.

(*c*) Widows of qualifying Members—from £6 to £8 per week.

S. 12(1) (a) of the original Act (the Legislative Assembly Members Superannuation Act, 1946) was also amended in order to make clear that for the purpose of counting towards entitlement to pension, a Member's service in any Parliament began on the day of his election. This provision was back-dated to 7th May, 1946.

South Australia (Members' Salaries).—Members' salaries were increased by the Statutes Amendment (Public Salaries) Act (No. 3 of 1955) with effect from 1st June, 1955. The annual salary of a Member of either House of Parliament is now £1,900, £1,950 or £1,975, according to the location of his electorate in relation to the capital city, Adelaide. Certain office holders receive increased additional remuneration as follows: President of the Legislative Council and Speaker of the House of Assembly, £850; Chairman of Committees, House of Assembly, £350; Leader of the Opposition, House of Assembly, £700; Public Works Standing Committee—Chairman £600, and Members £400; Joint Committee on Subordinate Legislation—Chairman £200, and Members £100. Ministers of the Crown now receive the following total remuneration—Premier, £4,000; Chief Secretary, £3,750; other Ministers, £3,500 each.

(*Contributed by the Clerk of the House of Assembly.*)

Tasmania (Parliamentary Salaries and Retiring Allowances).—The Parliamentary Salaries and Allowances Act, 1955 (No. 11 of 1955), provides for new salary rates (£1,382 p.a.) and electorate allowances (varying from £250 to £800) for Members of both Houses, and additional allowances to President and Speaker (£500 each), Chairmen of Committees (£300 each), Deputy-Chairman of Committees in the Legislative Council (£175), Government Leader (£1,000) and Deputy Leader (£300) in the Legislative Council, Leader of the Opposition (£1,000) and Deputy Leader of the Opposition (£300) and all officially recognised Whips (£150) in the House of Assembly.

The Parliamentary Retiring Allowances Act, 1955 (No. 59 of 1955), establishes a contributory scheme of pensions and other benefits for Members of both Houses, and a Trust to administer the scheme.

(*Contributed by the Clerk of the Legislative Council.*)

Western Australia (Parliamentary Allowances).—Parliamentary Allowances were increased by the Acts Amendment (Allowances and Salaries Adjustment) Act (No. 47 of 1955), to £A2,100 per annum for a metropolitan member and £A2,150 for a country member.

Provision was also made in this Act for the member who for the time being is recognised as the Leader of the Opposition in the Legislative Council to receive an additional allowance of £A450 per annum. Allowances received by the President and Speaker, Chairmen of Committees, and members of the Cabinet were increased proportionately.

(*Contributed by the Clerk of the Legislative Council.*)

Western Australia (Parliamentary Superannuation).—By the Parliamentary Superannuation Act Amendment Act (No. 46 of

1955), an amendment was made to the Parliamentary Superannuation Act to provide increased benefits to members on retirement. The benefits now range from £A11 per week for a member with over thirteen years' service to £A4 10s. per week for a member with not less than seven years' service. The amount contributed by members is £A78 per annum.

(*Contributed by the Clerk of the Legislative Council.*)

New Zealand (Parliamentary Salaries and Allowances).—As a result of the recommendations of a Royal Commission, Members of the House of Representatives in New Zealand have received a general increase in salaries and allowances as from 1st August, 1955. Section 27 of the Civil List Act, 1950 (1950, No. 99), provides that the Governor-General, on the recommendation of a Royal Commission appointed in that behalf, may from time to time by Order in Council, fix the salaries and allowances to be paid to the Prime Minister and other Ministers of the Crown, or Members of the Executive Council, to Parliamentary Under-Secretaries and to the Speaker and Chairman of Committees and other Members of the House of Representatives.

The first Royal Commission under the provisions of this Act was set up in 1951 and substantial increases in salaries and allowances were recommended. These recommendations were implemented by the Government, and full details were set out in THE TABLE (see pp. 147 and 148 of Vol. XX). A further Royal Commission was set up on 16th June, 1955, to review parliamentary salaries and allowances in the light of the increases which have taken place in the cost o living in New Zealand since 1951. The members of the Commissio were as follows—

Hon. W. E. Barnard, Barrister and Solicitor and ex-Speaker of the House of Representatives (Chairman).
Mr. J. H. Boyes, ex-Public Service Commissioner.
Mr. C. V. Smith, Company Executive.

The Commission's Report was laid on the Table of the House on 10th August, 1955 (*vide* Parliamentary Paper, 1955, H-50). A summary of the recommendations is as follows:

EXECUTIVE:	£	s.	d.
Prime Minister—			
Salary	3,750	0	0
Expense allowance	1,500	0	0
Ministers—			
Salary	2,500	0	0
Expense allowance	550	0	0

(Note: Where the ministerial office of Minister of External Affairs is held by a Minister other than the Prime Minister an additional expense allowance of £165 to be paid.)

	£	s.	d.
Ministers without Portfolio—			
Salary	2,000	0	0
Expense allowance	450	0	0
Parliamentary Under-Secretaries—			
Salary	1,500	0	0
Expense allowance	400	0	0
OFFICERS OF THE HOUSE:			
Mr. Speaker—			
Salary	1,950	0	0
Expense allowance	600	0	0
(Note: Residential quarters and certain services are provided in Parliament House for Mr. Speaker.)			
Chairman of Committees—			
Salary	1,575	0	0
Expense allowance	500	0	0
(Note: Sessional sleeping-quarters are provided in Parliament House for the Chairman.)			
LEADER OF THE OPPOSITION:			
Salary	1,950	0	0
Expense allowance	490	0	0
Allowance for travel outside electorate arising from his official position	215	0	0
MEMBERS:			
Salary	1,100	0	0
Expense allowance (according to classification of electorate) ...	275-705	0	0
NOTES:			
1. A basic expense allowance payable to all Members of ...	275	0	0
2. A sessional accommodation allowance payable to all Members other than those representing Onslow, Hutt, Petone, and the electorates in or around the Wellington City area of	165	0	0
3. A special additional allowance payable to Members representing "a" class electorates (*i.e.*, substantially urban) to meet extra travelling costs of	25	0	0
or			
A special additional allowance payable to Members representing "b" class electorates to meet additional travel costs of	82	10	0
or			
A special additional allowance payable to Members representing "c" class electorates to meet the extra travel costs involved of	165	0	0
4. A special additional allowance to the Member for Southern Maori of	100	0	0
5. A special additional allowance to the Members of the other three Maori seats of	50	0	0

The classification of electorates is to be made by the Representation Commission which has a detailed knowledge as to area, population, topographical features, etc. It was also recommended that the State provide a pool of typists during sessions to assist Members with their correspondence. Increases of salaries and allowances were to be made effective as from 1st August, 1955.

On 19th August, 1955, the House of Representatives unanimously approved a motion in the following terms, moved by the Rt. Hon. the Prime Minister—

That this House approves the recommendations made by the Royal Commission appointed to inquire into and report upon parliamentary salaries and allowances as set out in parliamentary paper H-50, and recommends the Government to give effect to such recommendations in terms of Part V of the Civil List Act, 1950, on and from 1st August, 1955.

The necessary Order in Council was passed to give effect to the increased salaries and allowances as from 1st August, 1955 (*vide* Parliamentary Salaries and Allowances Order No. 1955/147).

A subsequent development is of interest as being the first occasion in New Zealand where provision has been made for a regular three-yearly review of parliamentary salaries and allowances. On the 21st October, 1955, the Civil List Amendment Act (1955, No. 57) was passed, section 2 of which provides:

A Royal Commission shall be appointed for the purposes of this Section within three months after the date of every General Election of Members of Parliament.

(*Contributed by the Clerk-Assistant of the House of Representatives.*)

Lok Sabha (Rail Passes for Members).—The Salaries and Allowances of Members of Parliament Act, 1954, was amended, whereby Members of Parliament were entitled to a free First-Class Railway Pass instead of a Second-Class Pass. This was consequent upon the abolition of the existing First-Class in the Indian Railways and renaming of Second-Class as First-Class.

(*Contributed by the Secretary of the Lok Sabha.*)

Federation of Rhodesia and Nyasaland (Staff Conditions of Service).—The Committee on Standing Rules and Orders, which deals with such matters relating to staff as are referred to it by Mr. Speaker, made the following recommendations (1955 *Votes*, 103), which were adopted by the House:

Mr. Speaker, with the approval of the Committee on Standing Rules and Orders, may determine the terms and conditions of service of the members of the staff of the Federal Assembly and, in doing so, use as a guide, as far as it is practicable, the terms and conditions which apply to the Federal Public Service.

Subject to the foregoing, and with particular regard to pensions for the staff of the Federal Assembly, the occupants of such posts as are designated by Mr. Speaker as pensionable posts, shall have applied to them the same regulations and rules governing pensions as are in force for members of the Public Service. Pensionable service with a Territorial Public Service, a Territorial Legislature and the Federal Assembly, if unbroken, shall be treated as continuous service for the purpose of calculating pensions of officers of the Federal Assembly, and their dependants.

(*Contributed by the Clerk of the Federal Assembly.*)

Northern Rhodesia (Amendment of Emoluments Ordinance).—The Legislative Council (Emoluments) (Amendment) Ordinance, 1955 (No. 45 of 1955), amended the principal Ordinance enacted in 1954 which laid down the emoluments and allowances to be paid to the Speaker and unofficial members of the Legislative Council and provided that membership of certain bodies should not be regarded as offices of emolument under the Crown. The amending Ordinance amended the short title of the Principal Ordinance by substituting "Unofficial Members" for "Legislative Council", excluded Members of Executive Council from the definition of "Member" in section 2, and added section 4A laying down the salary and allowances to be paid to Members of Executive Council. (*Hans.*, 18th August, 1955, c. 1385.)

(*Contributed by the Clerk of the Legislative Council.*)

XXII. SOME RULINGS BY THE CHAIR IN THE HOUSE OF COMMONS, 1954-55

The following Index to some points of Parliamentary Procedure, as well as Rulings by the Chair, given in the House of Commons during the Fourth Session of the Fortieth Parliament of the United Kingdom of Great Britain and Northern Ireland (3 and 4 Eliz. II), is taken from Volumes 535 to 540 of the Commons *Hansard*, 5th Series, covering the period from 30th November, 1954, to 6th May, 1955.

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 Members should address the Chair), are not included, nor are isolated remarks by the Chair or Rulings having reference solely to the text of individual Bills. It must be remembered that this is an index, and that full reference to the text of the debate itself is generally advisable.

XXIII. EXPRESSIONS IN PARLIAMENT, 1955

The following is a list of examples occurring in 1955 of expressions which have been allowed and disallowed in debate. Expressions in languages other than English are translated where this may be succinctly done; in other instances the vernacular expression is shown, with a 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. Unless any other explanation is offered, the expressions used refer to Members or Members' speeches.

Allowed

"Adi Sakkai" ("Well done!"—ironical). (24 *Madras L.A. Deb.*, 76.)
"Bogus" (of the accounts of a Housing Board). (29 *Bombay L.A. Deb.*, 1457.)
"Cheap Parliamentary trick". (97 *Can. Com. Hans.*, 5633.)
"Contempt of Parliament, a repetition of his". (97 *Can. Com. Hans.*, 6184.)
"False and misleading statements". (97 *Can. Com. Hans.*, 6638-40.)
"Highly turbulent". (24 *Madras L.A. Deb.*, 994.)
"Nonsensical" ruled in Order when applied to sentiments expressed. (*W. Bengal L.C. Proc.*, 2nd March, 1955.)
"Stooge of the newspapers". (87 *Union Assem. Hans.*, 1979.)

Disallowed

"Ananias, in the same boat as". (1955 *Queensland Hans.*, 853.)
"babbling tongues". (*India L.S. Deb.*, 30th August, Part II.)
"Baroona blatherskite". (1955 *Queensland Hans.*, 625.)

"behaved like a ratbag and a fool". (1955 *Queensland Hans.*, 1376.)
"betrayed". (1955 *S. Aust. Hans.*, 429.)
"blackmailers". (*India L.S. Deb.*, 7th December, Part II.)
"bonsella" (pourboire). (37 *S. Rhod. Hans.*, 572.)
"bribed". (21 *Bihar L.A. Deb.*, 80.)
"bunch on the other side". (89 *Union Assem. Hans.*, 8026.)
"chancing their arm". (37 *S. Rhod. Hans.*, 535.)
"chatter". (161 *U.P.L.A. Proc.*, Part 5, p. 391.)
"class-room regulated by a stern schoolmaster" (of the House and the Chair). (*India L.S. Deb.*, 30th August, Part II.)
"co-existence". (*India L.S. Deb.*, 26th July, Part I, S.Q. No. 64.)
"complete variance with the truth". (89 *Union Assem. Hans.*, 8281.)
"coward", "cowardly". (538 *Com. Hans.*, 2138; 97 *Can. Com. Hans.*, 4393.)
"crocodile tears". (162 *U.P.L.A. Proc.*, Part 4.)
"cur". (1954-55 *Trinidad Hans.*, 1601.)
"damn", "damnable", "damnedest". (1954-55 *Trinidaa Hans.*, 304, 1688.)
"deceitful". (152 *U.P.L.A. Proc.*, Part 4, p. 339.)
"did not have the courage to tell the truth". (89 *Union Assem. Hans.*, 6280.)
"dishonest", "dishonestly". (537 *Com. Hans.*, 877; 1955 *Queensland Hans.*, 556.)
"distorted statement". (89 *Union Assem. Hans.*, 6513.)
"drunkards, we don't want to hand over the State to the". (14 *Bihar L.A. Deb.*, 29th September.)
"embezzlement". (156 *U.P.L.A. Proc.*, Part 1, p. 33.)
"faked". (15 *Bihar L.A. Deb.*, p. 46.)
"falsehoods". (10 *Bihar L.A. Deb.*, p. 45.)
"flog some goods". (37 *S. Rhod. Hans.*, 550.)
"gestapo". (*Fed. Malaya Hans.*, 3rd December, 336.)
"half truths, greatest exponent of". (1955 *S. Aust. Hans.*, 1240.)
"hoodwink". (21 *Bihar L.A. Deb.*, p. 59.)
"hypocrisy", "hypocritical". (88 *Union Assem. Hans.*, 3286; 1954-55 *Trinidad Hans.*, 687.)
"I should like you, Mr. Speaker, to advise the House why, when you are in the Chair, you do not wear a helmet and look like Ned Kelly as well as act like him". (1955 *Queensland Hans.*, 218.)
"irrelevant talk". (163 *U.P.L.A. Proc.*, Part I.)
"Kangaroo Court" (referring to a Standing Committee). (97 *Can. Com. Hans.*, 6821.)
"liar", "lie". (537 *Com. Hans.*, 165; 1955 *Queensland Hans.*,

152, 499, 633, 677, 1389; 20 *Madras L.A. Deb.*, 239; 161 *U.P.L.A. Proc.*, Part 2, p. 118.)

"low minded thing such as you". (1955 *Queensland Hans.*, 106.)

"low standard". (160 *U.P.L.A. Proc.*, Part 3, p. 248.)

"mango diplomacy". (*India L.S. Deb.*, 16th December, Part 1, S.Q., No. 1826.)

"manipulation of figures". (33 *Bihar L.C. Deb.*, 126.)

"Member was out at the bar". (1955 *Queensland Hans.*, 633.)

"mimicking Molotov". (1955 *Queensland Hans.*, 1378.)

"nonsense". (*India L.S. Deb.*, 26th August and 23rd December, Part II; 1954-55 *Trinidad Hans.*, 633, 1074.)

"nosey parker". (546 *Com. Hans.*, 186.)

"notorious Member". (87 *Union Assem. Hans.*, 547.)

"obeah". (1954-55 *Trinidad Hans.*, 392.)

"offer their wives and daughters as a bribe". (148 *U.P.L.A. Proc.*, Part 3, p. 190-1.)

"patriotic sense, if he has any". (*India L.S. Deb.*, 29th March, Part II.)

"plot or contrivance to kill the bill". (7 *Bihar L.A. Deb.*, 32.)

"prostitutes, a State governed by". (*Vindhya Pradesh Deb.*, 28th November.)

"puppets". (14 *Bihar L.A. Deb.*, 47.)

"quack". (*W. Bengal L.C. Proc.*, 18th August.)

"ranting ratbag". (1955 *Queensland Hans.*, 701.)

"ratted". (547 *Com. Hans.*, 1092.)

"rigged, this House has been". (1955 *Queensland Hans.*, 218.)

"rogue and scoundrel". (*India L.S. Deb.*, 8th September, Part I, S.Q., No. 1576.)

"rowdies". (28 *Madras L.A. Deb.*, 433.)

"Satans in the Assembly". (*W. Bengal L.A. Proc.*, 10th October.)

"selling pups". (37 *S. Rhod. Hans.*, 468.)

"silly". (1954-55 *Trinidad Hans.*, 1406.)

"smart alecs". (1955 *Queensland Hans.*, 981.)

"spineless skunks" (applied to Supreme Court Judges). (1955 *Queensland Hans.*, 510.)

"talking with tongues in their cheeks". (97 *Can. Com. Hans.*, 5799.)

"trick motion". (97 *Can. Com. Hans.*, 4660.)

"tried to conceal the truth or spoke a lie". (160 *U.P.L.A. Proc.*, Part 4, p. 342.)

"untouchable". (148 *U.P.L.A. Proc.*, Part 2, p. 118.)

"untruth, deliberate". (1955 *S. Aust. Hans.*, 128, 1405; 1954-55 *Trinidad Hans.*, 668.)

"washerman's dog" (in relation to students). (*Vindhya Pradesh Deb.*, 3rd March.)

XXIV. THE LIBRARY OF THE CLERK OF THE HOUSE

The following books, recently published, deal with parliamentary and constitutional matters and may be of interest to Members:

Colony and Protectorate of Kenya: A summary of the Events leading up to the Introduction of the Exchequer System in 1955 and an Outline of the General Principles of the Control of Public Expenditure and Revenue in Kenya. Published by *the Exchequer and Audit Department*, Treasury Building, Nairobi.

Conflict without Malice. By *Emanuel Shinwell*. Odhams. 21*s*.

My Political Life. Volume Three, The Unforgiving Years 1929-40. By *L. S. Amery*. Hutchinson. 30*s*.

The Colonial Territories, 1954-55. *H.M.S.O*. Cmd. 9489. 6*s*.

Australian Labour Leader: The Story of W. A. Holman and the Labour Movement. By *The Rt. Hon. H. V. Evatt*. Angus and Robertson. (Abridged Edition.) 30*s*.

Elections and Electors. By *J. F. S. Ross*. Eyre and Spottiswoode. 42*s*.

The British General Election of 1955. By *D. E. Butler*. Macmillan and Co., Ltd. 24*s*.

The South African Constitution. By *Henry John May*. George Allen and Unwin, Ltd. 57*s*. 6*d*.

Government by Committee: An Essay on the British Constitution. By *K. C. Wheare*. Oxford University Press. 25*s*.

Executive Discretion and Judicial Control. By *C. J. Hamson*. Stevens. 12*s*. 6*d*.

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The Unknown Prime Minister: The Life and Times of Andrew Bonar Law, 1858-1923. By *Robert Blake*. Eyre and Spottiswoode. 42*s*.

The People and the Constitution (2nd ed.). By *Cecil S. Emden*. Oxford University Press. 42*s*.

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(iii) to publish annually a JOURNAL containing articles (supplied by or through the Clerk or Secretary of any such Legislature to the Joint-Editors) upon Parliamentary procedure, privilege and constitutional law in its relation to Parliament;

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Editors for Volume XXIV of the JOURNAL: R. W. Perceval and C. A. S. S. Gordon.

XXVI. MEMBERS' RECORDS OF SERVICE

Note.—*b.* = born; *ed.* = educated; *m.* = married; *s.* = son(s); *d.* = daughter(s).

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.

Azfar, S. N.—Deputy Secretary of the East Pakistan Assembly; *ed.* Calcutta University (B.Sc.); Second Assistant Secretary to the East Pakistan Assembly, November, 1949; appointed to present position, 1st May, 1956.

Browne, W. G.—Clerk-Assistant of the Legislative Council of Western Australia and Usher of the Black Rod; *b.* 1897; joined Parliamentary Staff 1926; Records and Accounts, Legislative Council, 1947; service in Royal Navy 1914-18; appointed to present position March, 1956.

Clare, B. L.—Clerk of the Legislative Assembly, Territory of Western Samoa; *b.* 1924; *ed.* Opunake District High School, New Zealand; joined New Zealand Public Service in 1940; Clerk in Department of Attorney-General of Western Samoa, 1948; appointed

* Barrister-at-Law or Advocate.

Clerk of Legislative Assembly in 1952; the Clerk combines the position with Commissioner of Labour, Samoan Public Trustee, and Registrar of Land.

Davidson, M. N.—Clerk of the Central Legislative Assembly, East Africa High Commission; *b.* 1922; *ed.* Tonbridge and St. John's College, Cambridge, B.A.; Military Service 1941-43, Captain; Assistant Colonial Secretary Cyprus 1944; Governor's Private Secretary, 1945; Clerk Executive Council, 1948; District Commissioner, 1949; District Officer, Tanganyika, 1954; Assistant Secretary, E.A.H.C., 1955; appointed to present position, 1955.

McAlpin, Douglas Ian.—Clerk of the Legislative Council for the Territory of Papua and New Guinea; *b.* 3rd October, 1924, Dandenong, Victoria; *ed.* Dandenong High School and Wesley College, Melbourne; *m.* 1948, 2 *s.* 1 *d.*; Clerk in State Electricity Commission of Victoria, 1940; served 2nd A.I.F., 1942-46; joined Public Service of Papua and New Guinea, 1946; appointed Clerk of the Legislative Council on inauguration, 1951.

MacNeill, John Forbes, Q.C., LL.B., B.A.—Clerk of the Senate and Clerk of the Parliaments of Canada; *b.* 25th September, 1897, at Hampton, N.B.; *ed.* in public schools of N.B. and N.S., Acadia University (B.A.) and Dalhousie University (LL.B.); *m.*, 2 *d.*; member of the bar of N.S.; served overseas (France, Belgium) 1915-19; secretary to Sir Charles Fitzpatrick, Chairman, Statute Revision Commission, 1924-27; Counsel, Department of Justice, 1927-42; appointed K.C. (N.S.), 1938; Law Clerk and Parliamentary Counsel of the Senate, 29th January, 1942; appointed to present position, 22nd October, 1955.

S. N. Mukerjee, M.A., LL.B.—Secretary, Rajya Sabha, Parliament of India; *b.* 1898; *ed.* Presidency College and University Law College, Calcutta; practised law 1922-32; joined Legislative Department, Bengal, 1933; selected as Joint Secretary and Draftsman in the Constituent Assembly of India and then in the Ministry of Law, 1947-52; appointed Secretary, Council of States (now Rajya Sabha) in May, 1952; also acting as Government of India's correspondent for the United Nation's *Yearbook on Human Rights* since 1951.

Noble, G. W.—Second Clerk-Assistant, Federal Assembly, Federation of Rhodesia and Nyasaland; *b.* 1914; *ed.* Plumtree School, Southern Rhodesia; Southern Rhodesia public service, 1933; active service, 1939-45, commissioned Captain; joined staff Federal Assembly, 1953; Second Clerk-Assistant, 1955.

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(Art.)=Article in Journal. S/C=Select Committees.
(Com.)=House of Commons (U.K. unless otherwise specified).

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