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

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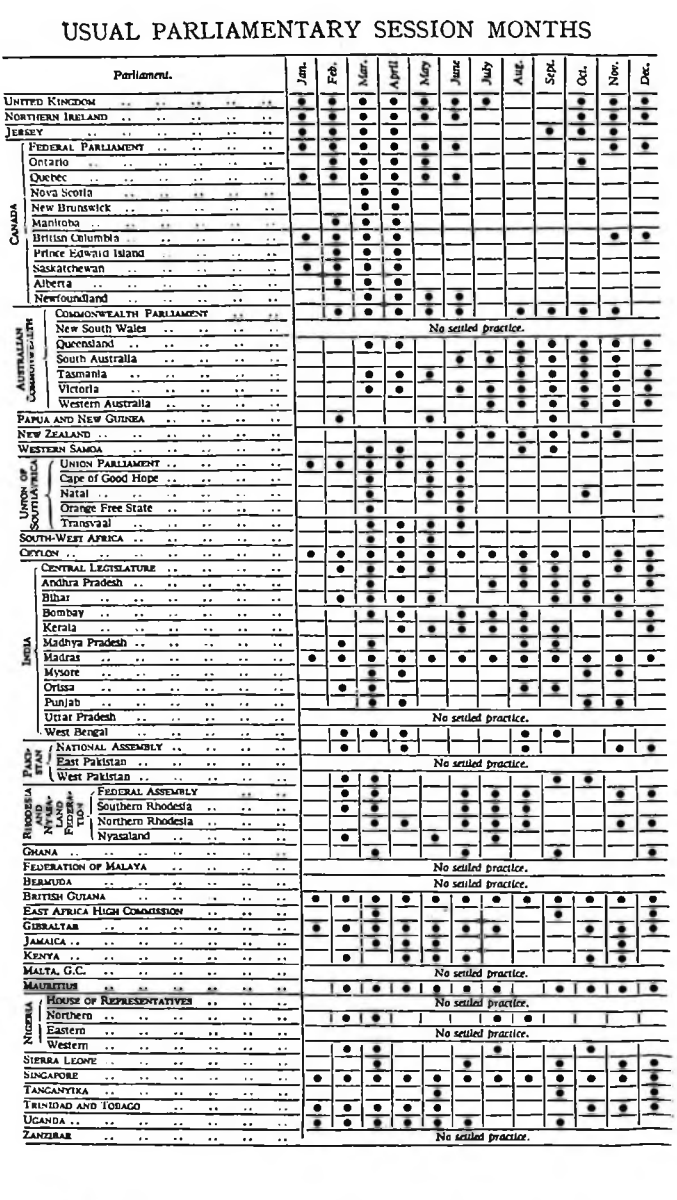

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THE SOCIETY OF CLERKS-AT-THE-TABLE

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I. EDITORIAL

Introduction to Volume XXVI.—Contrary to the agreeable precedents of recent years, there was no description in Volume XXV of any Parliamentary occasion graced by the attendance of royalty. We are happy to be able to remedy this in the present Volume by including a description of the visit of Her Royal Highness the Princess Royal to the Legislature of the Eastern Region of Nigeria, and we are grateful to the author for his skilful evocation of the dignity of the occasion and the beauty of its setting.

Once again we are indebted to the Honorary Life President for drafts of Articles which he made from information provided in answer to early Questionnaires. Such drafts provide the basis of Articles III and IV in the current Volume, in which is also incorporated more recent information sent by Members with their replies to the Questionnaire for this Volume.

By the death of Sir Frank Tribe, the Comptroller and Auditor General, on 20th June, 1958, the United Kingdom lost one of its most distinguished public servants, remarkable not only for his great ability and zest for his work, but also for his personal charm and kindness which none of those who were associated with him will ever forget. Although not a member of the Society, he audited its accounts from the time of its transference to Westminster, and took a great interest in its work. On the day before he died, we received from him the final draft of Article V, in which he describes, in brief and lucid compass, the functions of his office and its relationship with the Committee of Public Accounts.

As usual, this Volume contains an Article on Applications of Privilege, at Westminster and abroad; nor does the quantity of such instances appear to diminish with the years. In view, however, of its

importance, the description of what, from the parliamentary point of view, must rank as the *cause célèbre* of 1957 and 1958—the "Strauss Case" in the House of Commons—has been made the subject of a separate Article (VI). As is well known, the House of Commons cannot of itself create a new privilege, but it has the right to define the applicability of existing privilege to new circumstances. In making such a definition, it has usually in the past been guided by the researches and advice of a committee; a notable example of such guidance occurred in 1938, and is described in Volume VII (pp. 122-49). In the present instance, however, the House of Commons declined to accept the advice of the Committee of Privileges.

In November, 1956, the House of Commons set up a Select Committee on Procedure, not, as on some occasions in the past, with the object of investigating the whole scope, content and philosophy of the Standing Orders, but with an order of reference strictly confined to certain aspects of financial and standing committee procedure. We are grateful to Mr. M. H. Lawrence, the Clerk to the Committee (whose work is already known to readers of this Journal), for an Article describing the work of the Committee and its two Reports.

The Clerk-Assistant of the New South Wales Legislative Council has described, in a brief but pregnant Article (VIII) the disappearance of the long-established privilege attaching to Officers of Parliament (doubtless fondly cherished, but certainly never used, by them) of freedom from garnishee proceedings with respect to their parliamentary salary.

Once again the Clerk of the House of Assembly of the Union of South Africa has allowed us to print the annual Report upon precedents and unusual points of procedure which he compiles for the benefit of the Members of his House. He has also attached to a short Article (X) on travelling and subsistence allowance to Members a schedule showing the development of parliamentary and special allowances in South Africa from their inception in 1910 to the present day.

In Article XI the Clerk-Assistant of the Federal Assembly of Rhodesia and Nyasaland sets out in detail certain constitutional and electoral changes resulting from legislation in 1957 by the Federal Assembly. Constitutional matters are also dealt with in Articles XII and XIV. The first of these, by the Clerk of the National Assembly of Ghana, carries on the study of constitutional development in that country from the constitution of 1954, which was described in Volume XXIII of THE TABLE (pp. 102-4), though the inquiry of Sir Frederick Bourne in 1955 and the Conference at Achimota which considered his Report, up to the achievement of complete independence within the Commonwealth and the opening of the first Ghana Parliament by Her Royal Highness the Duchess of Kent on 6th March, 1957. The Federation of Malaya also achieved a similar in

dependent status in 1957, and we are most grateful to Mr. Charles Fredericks, the Clerk of the Legislative Council, for his meticulous and exhaustive treatment of the recommendations of the Constitutional Conference of 1956 and the Reid Commission which followed it, and his description of the final stages of revision and development which culminated in the handing over to the new Prime Minister by His Royal Highness the Duke of Gloucester, on 31st August, 1957, of a message of welcome into the Commonwealth from Her Majesty and the Constitutional Instruments embodying the independence of the Federation.

A difficulty which arose in one of the Interim Regional Assemblies of Ghana regarding the election of a Chairman is described in Article XIII by the Assistant Clerk of the National Assembly. In a judgment restraining the Interim Assembly from meeting under the chairmanship of a person not within its membership, the Judge of the High Court at Kumasi ruled that the Interim Regional Assembly was in effect a select committee of Members of the National Assembly, and that if the intention of the Constitution was that a Chairman could be appointed from outside, it would have to be so expressly stated.

Besides the Article on Applications of Privilege, to which reference has already been made, there are the usual Articles comprising Miscellaneous Notes on a variety of subjects, the List of Rulings made from the Chair of the House of Commons during Session 1956-57, and Expressions in Parliament in 1956. A number of books are reviewed, including the 16th Edition of Erskine May's Parliamentary Practice.

Lord Campion, G.C.B., Hon. D.C.L.—On Sunday, 6th April, Lord Campion died at his home at Abinger, in Surrey. A service in commemoration was held at St. Margaret's, Westminster, on Thursday, 8th May, at which an address was delivered by the Very Rev. A. C. Don, K.C.V.O., D.D., Dean of Westminster.

In spite of indifferent health during his last years, Lord Campion retained to the end his lively interest in all matters concerning parliament and Commonwealth. Even in his retirement, the volume of work which he undertook, either by himself or in collaboration, was formidable. For collaboration, indeed, he had a rare genius; and those who had the privilege of working—and relaxing—with him will never forget the unique combination of wisdom, energy and, above all, humanity, with which his activities were infused.

To Lady Campion, who survives him, we offer on behalf of the Society our deepest and sincerest sympathy.

The following tribute has been written by the Clerk of the House of Commons:

The sudden death of Lord Campion on Easter Sunday will have shocked not only the members of the Society who were his colleagues in the United Kingdom Parliament, but also many who got to know him when visiting Westminster or when Campion in his turn visited the Parliaments of the Commonwealth.

Gilbert Campion entered the service of the House in 1906 after a brilliant career at Oxford, and even in those early days showed his interest in comparative procedure, being commissioned by the then Clerk to collect information on the procedure of certain European countries for the use of the 1913 Committee on Procedure. After service in the 1914 war, Campion returned to be Secretary to the Speaker's Conference on the Second Chamber and to that on Devolution. In 1921 he began his long period at the Table, where he served for 10 years as Second Clerk-Assistant, 6 years as Clerk-Assistant and 11 years as Clerk.

It would be superfluous here to commemorate his immense work on the 14th Edition of Erskine May, involving practically re-writing every word of that voluminous tome, or to praise his "Introduction to the Procedure of the House of Commons". Rather will it be remembered that one of the first things Campion did when he became Clerk was to apply for membership of the Society, so becoming the first Clerk of the United Kingdom House of Commons to be a Member. That action was typical of the great interest which he always showed in Commonwealth Parliaments, and although until he retired Lord Campion had no opportunity of visiting other Commonwealth Legislatures his unrivalled knowledge of comparative procedure and his vast experience were always at the service of his Commonwealth colleagues. Lord Campion was also keenly interested in fostering the mutual curiosity which after the last war Westminster and the Commonwealth showed in the other's procedure. Though his plans for a regular interchange of clerks were never able to be put in operation, he facilitated the first official visits to Commonwealth Legislatures by one of the Clerks at the Table of Westminster. Then, in 1948 and 1949, Campion made a prolonged tour, taking in Ceylon, Australia, New Zealand, South Africa, Rhodesia, Nyasaland, Kenya and the Sudan, and later to his great delight he was able to go to Canada, but regretted that he was never able to revisit

India, the country of his birth. He never forgot the warm-hearted hospitality he had received on these tours, and nothing gave him greater pleasure during the remainder of his life than a gossip at Little Bowes with a former colleague from the Commonwealth.

M. N. Davidson.—It is with the deepest regret that we have to record the sudden death at his home in Nairobi on Wednesday, 25th June, 1958, of Mr. Malcolm N. Davidson, Clerk of the East Africa Central Legislative Assembly.

Mr. Davidson was the son of the late Mr. Sydney Herbert Davidson, of the Ministry of the Interior, Cairo. He was 36 and was educated in Northern Ireland, at Tonbridge School, Kent, and at St. John's College, Cambridge, where he graduated B.A. In 1947 he passed the preliminary examination of the Inner Temple. From 1942 to 1943 he was a Captain in the R.A.O.C., having served as an Officer Cadet in the Honourable Artillery Company from 1941-42.

He will be known to those who attended the Sixth Parliamentary Course in May, 1957, as a very keen advocate of Parliamentary Procedure and Practice, and by his passing the East Africa High Commission have lost a most valuable officer in this sphere.

Our deepest sympathy goes to his wife and her family in their grievous loss.

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

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

O.B.E.—S. Ade Ojo, Esq., Hon. M.B.E., formerly Clerk of the House of Representatives of Nigeria.

Acknowledgments to Contributors.—We have pleasure in acknowledging articles in this Volume from Mr. A. E. Eronini, M.B.E., Clerk of the Eastern House of Assembly of Nigeria; Sir Frank Tribe, K.C.B., K.B.E., late Comptroller and Auditor-General of Great Britain; Mr. M. H. Lawrence, a Senior Clerk in the House of Commons; Mr. L. C. Bowen, Clerk-Assistant of the Legislative Council of New South Wales; Mr. J. M. Hugo, B.A., LL.B., J.P., Clerk of the House of Assembly of the Union of South Africa; Mr. E. Grant-Dalton, Clerk-Assistant of the Federal Assembly of Rhodesia and Nyasaland; Mr. K. B. Ayensu, M.A., Clerk of the National Assembly of Ghana; Mr. J. H. Sackey, Assistant Clerk of the National

Assembly of Ghana; and Mr. C. A. Fredericks, Clerk of the Legislative Council of the Federation of Malaya.

For paragraphs in Articles XV ("Applications of Privilege") and XVI ("Miscellaneous Notes") and for book reviews we are indebted to Mr. C. F. L. St. George, Clerk of the Journals, House of Lords; Mr. R. M. Price, Assistant Librarian, House of Lords; Mr. D. W. S. Lidderdale, Fourth Clerk at the Table, House of Commons; Mr. A. A. Tregear, B.Comm., A.I.C.A., Clerk of the House of Representatives of the Australian Commonwealth; 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. J. M. Hugo, B.A., LL.B., J.P., Clerk of the House of Assembly of the Union of South Africa; Mr. K. W. Schreve, Clerk of the Cape of Good Hope Provincial Council; Mr. R. St. L. P. Deraniyagala, M.B.E., B.A., Clerk of the House of Representatives of Ceylon; Shri S. N. Mukerjee, M.A., LL.B., Secretary of the Rajya Sabha of India; Shri M. N. Kaul, M.A., Secretary of the Lok Sabha of India; Shri S. H. Belavadi, Secretary, Bombay Legislature Department; Shri H. B. Shukla, Deputy Secretary, Bombay Legislature Department; Shri T. Hanumanthappa, B.A., B.L., Secretary to the Legislature of Madras; Shri G. S. Venkataramana Iyer, B.Sc., M.L., Secretary of the Legislature of Mysore; Shri D. N. Mithal, Secretary of the Legislative Assembly of Uttar Pradesh; Mr. M. B. Amhad, M.A., LL.M., Secretary of the National Assembly of Pakistan; Mr. K. Ali Afzal, Joint Secretary of the National Assembly of Pakistan; Mr. J. R. Franks, B.A., LL.B., Clerk of the Legislative Assembly of Southern Rhodesia; Mr. A. N. Mitchell, O.B.E., Clerk of the Legislative Council of Northern Rhodesia; Mr. J. D. Kennan, Clerk of the Legislative Council of Nyasaland; Mr. A. W. Purvis, LL.B., Clerk of the Legislative Council of Kenya; Mr. L. Rex Moutou, Clerk of the Legislative Council of Mauritius; Mr. S. W. Wright, Clerk of the Legislative Council of Sierra Leone; and Mr. Loke Weng Chee, Clerk of the Legislative Assembly of Singapore.

II. VISIT OF HER ROYAL HIGHNESS THE PRINCESS ROYAL TO THE EASTERN HOUSE OF ASSEMBLY, ENUGU, NIGERIA, ON 16th NOVEMBER, 1957

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

During her stay in the Eastern Region of Nigeria (15th-18th November) Her Royal Highness the Princess Royal visited the House of the Eastern Legislature and delivered a Most Gracious Message from Her Majesty the Queen, congratulating the Eastern Region of Nigeria on its attainment of Regional self-government in August, 1957. This very important event emphasised the Region's internal autonomy of governance, and no effort was spared to make it a great success.

The Eastern House of Assembly, set as it is at the foot of low hills and surrounded by cool green lawns, lends itself to pageantry. When Her Royal Highness took the Royal Salute, she did so in an ideal setting. The quiet lawns, flower beds and shady trees provided a wonderful background to the scarlet and khaki of the Guard of Honour, and the hundreds of happy people who had come to witness the outdoor ceremony. Even more impressive was the interior of the House itself. Green shrubs and palms decked the spacious hall, and on each side of the crimson-carpeted main staircase was set a low border of cannas and green ferns.

Her Royal Highness proceeded to the Chamber of the House accompanied by the Governor, His Excellency Sir Robert Stapledon, K.C.M.G., C.B.E., and the Chief Justice of the Eastern Region, Sir John Ainley, M.C., followed by the Gentleman in Attendance to Her Royal Highness, Major G. H. Eastwood, C.V.O., C.B.E., and the Aide-de-Camp.

In the Chamber itself everything was quiet. Faintly from outside came the sound of martial voices, and eventually, shattering the stillness, came three raps upon the "Ayes" door, announcing the Princess Royal's arrival.

The Chamber of the Eastern House is a fitting complement to the dignity of its exterior. Light is admitted on two sides by french windows the whole of their length, but for this occasion special interior lighting had been added, heightening the effect of soft-toned woods and the crimson of carpeted gangways, dais and raised walk along the centre of the Chamber, specially constructed so that Her Royal Highness might have no difficulty in negotiating steps in a long gown.

The Serjeant-at-Arms admitted Her Royal Highness and led her to the Bar of the House, where she was received by Mr. Speaker. Mr. Speaker then led the procession to the dais. At the dais, Mr. Speaker, sombrely but magnificently impressive in wig, Court dress and the black and gold of his robes, took one pace to his left, bowed and waited as Her Royal Highness mounted the dais. For a moment the Princess Royal surveyed the crowded Chamber and then said quietly, " Pray be seated ".

Seated on the Throne the Princess Royal received Her Majesty's Most Gracious Message from the Gentleman in Attendance and then addressed the House as follows:

Mr. Speaker and Honourable Members. I have it in command from Her Majesty the Queen to read the following Message, and I have very great pleasure in doing so.

" The memories of the visit which my husband and I paid to Nigeria nearly two years ago and the warmth of the welcome we received are still fresh in our minds. Particularly do I remember the occasion on which I was presented in your House with a Loyal Address. When replying to that Address I referred to the impressive progress which can be achieved by co-operation between my people in Nigeria and their friends in Britain.

I am deeply satisfied that the progress of which I then spoke has now been crowned by the attainment of Regional self-government.

In charging this Legislature with responsibility for the good government of my people in the Eastern Region, I pray for your success in carrying out that responsibility. Such success is fundamental, both to the well-being of this Region, and to the further constitutional progress of Nigeria.

I have been particularly happy that my people of the Eastern Region share with my people in the other parts of the Federation the aspiration that Nigeria shall, as a free and sovereign Federation, take its place among the nations of the Commonwealth. It is my earnest hope that this common ambition, because of its power to advance the well-being of all my people in Nigeria, will call forth the resolution and tolerant goodwill which are necessary to ensure that its worth shall endure. I pray that the blessing of Almighty God may rest upon your deliberations."

Her Royal Highness continued:

Mr. Speaker, now that I have delivered Her Majesty's Message I should like to add my own good wishes for the future of the Eastern Region. It has been a very great pleasure for me to meet so many of you here in Enugu. I now look forward to enjoying my visit to Onitsha as much as Her Majesty the Queen enjoyed her visits to Calabar and Port Harcourt.

Mr. Speaker and Honourable Members, I too pray that the blessing of Almighty God may rest upon your deliberations.

Mr. Speaker, bowing to Her Royal Highness, received the Message on behalf of the House.

The Premier of the Eastern Region, Dr. the Honourable Nnamdi Azikiwe, rose in his place, bowed to Her Royal Highness and delivered the Region's reply, as follows:

Mr. Speaker, it is with deep feelings of loyalty and pride that I rise to reply to the Most Gracious Message from Her Majesty the Queen which you have

just received from Her Royal Highness. I know that all the Honourable Members of this House will join with me in expressing our grateful appreciation of Her Majesty's Message, delivered by Her Royal Highness, whose presence graces this Chamber today.

In the short time since Her Majesty honoured this Region and this House by her visit, there has indeed been much progress, not only constitutional and political, but in the development of those social and public services which are the immediate need and the inalienable right of the people of this Region. I refer particularly to the start of universal primary education, which has placed us on top of all other countries in tropical Africa, the expansion of rural health services, which has attracted the attention and co-operation of the World Health Organisation, and the continued improvement of our road system.

Though much has been done, much more remains to be done. As the elected representatives of the people, we are deeply conscious that the attainment of Regional self-government is not an end in itself, but a means to an end. That end is to make this Region a contented, prosperous and self-sufficient member of a free and sovereign Federation of Nigeria which, itself, will be an honoured partner in the wider association of the Commonwealth. To this purpose we shall devote our energies and by the grace of God we shall not fail.

We are most happy to have Her Royal Highness among us, and since time does not permit her to see more of this Region, may I humbly assure her that the welcome she has had here in Enugu, and will have this evening in Onitsha, is indicative of our loyalty to the Crown and the warm-hearted affection of our people for our friends in Britain.

Mr. Speaker, let me repeat the thanks of this Honourable House, in its humble duty, for Her Majesty's Most Gracious Message, and for Her Royal Highness's own good wishes, and may I stress our faith and belief in the concept of the Commonwealth as an association of free and independent Nations, bound together by a common allegiance to the Crown.

When the Premier had finished speaking, the Clerk of the House rose from his place on the left of Her Royal Highness, crossed the gangway, bowing as he passed the Princess Royal, and received the speech from the Premier in order that he might hand it to the Princess Royal. When she had received it from his hands, the Clerk bowed once more, moved slowly backward until he descended the raised walk, and resumed his seat.

The proceedings were now at an end and the procession left the Chamber in the following order:

Clerk of the House,
The Speaker,
Her Royal Highness,
His Excellency the Governor,
The Chief Justice,
Gentleman in Attendance,
The Aide-de-Camp.

Her Royal Highness ascended the staircase to the Clerk's room to sign the Visitor's Book and inspect the Roll of Honour. Through the french windows in this room the crowds could be seen waiting for the Princess Royal to leave the House, and so for a few moments she

stepped out on to the balcony and waved in answer to their shouts and hand wavings.

The procession then descended to the hall, and there Her Royal Highness took leave of those attending her. The car moved off to the sound of the Royal Salute and the cheers and bustle of the happy crowds who had come to see her and play their part in this ceremonial reception of Her Majesty the Queen's Most Gracious Message of congratulation to the Eastern Region on its attainment of self-government.

III. PARLIAMENTARY SECRETARIES (UNDER-MINISTERS)

Answers to Questionnaires

The Questionnaires for Volumes XV and XXIV contained the following item:

Please give authority for appointment of Members as Parliamentary Secretaries (Under Ministers)?

The Westminster practice of appointing Members as Parliamentary Secretaries—or, as the office is perhaps better understood in other Parliaments and Legislatures of the Commonwealth, as "Under Ministers"—in order to assist and relieve Ministers in the discharge of their Parliamentary and departmental duties as well as in the political field outside Parliament, has been adopted in many of the large and densely populated parts of our Commonwealth and Empire.

This practice also has the advantage of relieving the permanent heads of Government Departments (who are, of course, Civil Servants and therefore holders of non-political appointments) from having to deal with matters which more fittingly belong to the political sphere.

This Article has therefore been suggested as a means of assembling information on the practice in this regard in the various parts of the Commonwealth.

United Kingdom

Certain references to the subject of Parliamentary Secretaries (Under Ministers) have been made in THE TABLE;[1] and Erskine May, in dealing with this office under "disqualifications for membership" of the House of Commons, states that the political under-secretaries of the departments of state require to be specially provided for in order to be permitted to sit in the House of Commons.

Today, neither Ministers nor Parliamentary Secretaries require to

seek re-election by their constituents after appointment to any of these offices.[2] The restriction on the number of Ministers and Parliamentary Secretaries entitled to sit in the House of Commons has already been dealt with in THE TABLE.[3] Certain exceptions, however, were made in case of war emergency, but there is a permitted maximum of 72 paid Ministerial offices whose holders may sit and vote in the House of Commons.

There are at present,[4] including the 5 Junior Lords of the Treasury and certain members of Her Majesty's Household, 45 persons holding the position of Parliamentary Secretary, of whom 9 sit in the Lords.

The salary paid to the Parliamentary, Financial and Economic Secretaries to the Treasury is £3,750 each, and to other Parliamentary Secretaries is £2,500. The remaining Lords of the Treasury and the Officers of Her Majesty's Household who perform the functions of Whips in their respective Houses, receive £2,200 or £2,000 according to the nature of their duties. By the provisions of the Ministerial Salaries Acts, 1957,[5] those of the foregoing who are Members of the House of Commons are entitled to draw in addition £750 of their salary as Members of Parliament.

In accordance with information received, the following is the practice on the subject in the Overseas Parliaments and Legislatures:

Jersey

The functions normally performed by a Minister are performed by a Committee, appointed by the States. In practice, the States first appoints the President of the Committee, who then recommends the necessary number of members for appointment. Other recommendations may be made. The Committee, when constituted, appoints a Vice-President.

Canada

In the Dominion Parliament, what are known at Westminster as "Parliamentary Secretaries", are described as "Parliamentary Assistants to Ministers".

The appointment of members of Parliament to these offices was announced on 28th January, 1943, in the Speech from the Throne at the Opening of the Fourth Session of the XIXth Parliament by the Governor-General (Major-General the Rt. Hon. the Earl of Athlone, K.G., G.C.B., G.C.M.G., G.C.V.O.), who said:

> You will be asked to make provision for the appointment of Parliamentary assistants to those of my ministers whose duties have become particularly onerous because of the demands of War.[6]

These appointments were urged in debate on the subsequent address,[7] as well as opposed on the ground that the Canadian position

was not the same as in England; that Canada could ill afford the expenditure and that they would only be glorified private secretaries.[8] Questions were asked as to the early news in the Press of appointment to these offices.[9]

These appointments were also urged in the debate on the Budget.[10] Definite steps were taken on 20th April, 1943,[11] when the following amended Motion was moved by the Minister of Defence (Hon. J. L. Ralston) in Committee of Supply: "Legislation: House of Commons"—

> That vote No. 116 of the Main Estimates for the year ending 31st March, 1944, be amended to read as follows:
>
> 116. To provide for payment out of the consolidated revenue fund to each person appointed by the Governor in Council to be a parliamentary assistant to assist a Minister of the Crown and to represent his department in the House of Commons, in such manner and to such extent as the Minister may determine, a salary of $4,000 per annum and *pro rata* for any period less than a year: provided however, that notwithstanding any act or other law to the contrary payments made hereafter shall not render any such person, if he be a member of the House of Commons, liable to any penalty or disqualification, or vacate the seat of any member of the House of Commons or render such member ineligible to sit or vote in the said House, and no person receiving payment hereunder shall thereby be disqualified as a candidate at any Dominion election.

This amendment Motion was then moved by the Minister, when the Prime Minister (Rt. Hon. W. L. Mackenzie King) said[12] that they felt that the designation they had chosen would be more appropriate as applied to their Parliament, as all Ministers in Canada were not designated as Secretaries of State.

The Prime Minister recalled that the appointment of assistants to Ministers had been made in Canada in the war of 1914-18, provision for which was by Order-in-Council (July, 1916) subsequently confirmed by legislation,[13] which lapsed at the close of the war. In 1921 he had adopted the practice of having under-secretaries, but as no provision was made for their payment they were not too keen on appointment. This was done in an informal way, just as the appointment of Parliamentary Private Secretaries at Westminster, who received no salaries. In London, every department had Parliamentary Secretaries, some more than one, both in the Lords and Commons, which was found necessary on account of the extent of work that had to be performed for the administration.

The next attempt to appoint Parliamentary Secretaries in Canada had been in 1936, the speech from the Throne containing the following paragraph:

> A bill to provide for the creation of parliamentary secretaryships will be submitted for your consideration.

Mr. Mackenzie King said he felt that it would be a great advantage to Parliament and to the country to have younger members of Parliament becoming familiar with the work of the different Government

Departments; it would also assist Parliament itself as well as afford Ministers the assistance they certainly required. The Bill of 1936, however, had not been proceeded with. The Prime Minister himself had to take the responsibility for making the appointment, but it was imperative he should make it in consultation with the Minister concerned.[14] Never before had they had so large a measure of agreement on the necessity for these appointments as at the present time.[15]

The salary proposed was $4,000 per annum, and it was expected that hon. members appointed to these positions would be prepared to give their time both in Session and during Recess, payment to be *pro rata* to the time given. A Parliamentary Assistant to a Minister would be expected to help the Minister in any way the Minister might think fit, and he would have to be someone *persona grata*, not only to the Minister himself, but to the deputy head of the department (*i.e.*, the permanent head) and in close touch with it and indeed with the Government itself. The Minister would, of course, be responsible for all the official acts and utterances of his assistant, which was why the assistants would have to be chosen from among the supporters of the Administration.[16]

The position of the assistant would be highly confidential, on occasions possibly involving his presence in the Cabinet Council. It would be impossible to make these appointments on the basis of geography, religion, race or any other consideration other than that, first and foremost, they would be made on the basis of ability and suitability of the individuals elected. These appointments would not imply giving preferment in the matter of subsequent appointment to the Cabinet, and they should not in any way affect the assistant's freedom to express his own view.[17] It was proposed at present to limit the number of appointments to ten; the Prime Minister, Finance, Defence (Air and National), Munitions and Supply, Labour, Agriculture, Justice, Pensions and Health.[18]

These appointments were being made, concluded the Prime Minister, first, because of the necessity of giving much-needed assistance to the Ministers at this time of war; secondly, to meet the wishes of hon. members to be as fully and promptly informed as possible on matters with which they were immediately concerned; and thirdly, to afford M.P.s an additional opportunity of becoming familiar with the whole organisation of public administration and pressing questions.

An amendment was moved by an hon. member "That item 116 be reduced to one dollar",[19] which was subsequently negatived on division.

What opposition there was to the Resolution was based on the financial aspect and on the opinion that, while there was necessity for these posts at Westminster, there was none in Ottawa.

After a brief reply from the Prime Minister, the Item as amended

was agreed to, reported to the House and adopted, and leave was given to present a Bill (No. 73) entitled:

—an Act for granting to His Majesty a certain sum of money for the public service of the financial year ending the 31st March, 1944,

which was read the first time, passed through all its stages, was agreed to by the Senate and duly became 7-8 Geo. VI, c. 6.

Further Questions were subsequently asked on the subject[20] as to announcements of the appointments made, or whether the Parliamentary Assistants had accepted directorships.

The phrase used in the Orders of Council making these appointments was "to assist the [*Minister concerned*], within and without Parliament, in such manner and to such extent as he may determine".[21] The question was raised as to whether the Parliamentary Assistants should be sworn, but the Minister of Justice (Hon. L. S. St. Laurent) in reply to a Question on the subject on 31st May,[22] said that he had had the question examined by the Law Officers of the department and was informed by them that they found no provisions, statutory or otherwise, which required that the Parliamentary Assistants to the Ministers take any additional oath beyond the oath of allegiance as M.P.s, although there was a provision in the statutes under which persons other than those named could be required by the Governor-General in Council to take, in addition to the oath of allegiance, an oath of secrecy, and the question whether or not that would be appropriate was still under consideration.

On 12th July,[23] in Committee on the War Appropriation Bill—Department of External Affairs, the Prime Minister, in reply to a Question, said that a Parliamentary Assistant was in the same position as every other hon. member in the matter of his right to speak for himself and express his own opinions.

Parliamentary Assistants at Ottawa do not sit on the Treasury Bench, but keep the places they had before appointment.

Australia

There are no Parliamentary Secretaries in the *Commonwealth* Parliament, or in the State Parliaments of *Queensland*, *South Australia* and *Western Australia*.

New South Wales.—The practice of appointing Parliamentary Secretaries is not followed in New South Wales, although Ministers without portfolio (sometimes known as Assistant Ministers) are appointed. At the present time there are two; they attend Cabinet meetings and enjoy the full status of a Minister.

Victoria.—It has never been the practice to appoint Parliamentary Secretaries as such in Victoria, but from the time of the appointment of the first Ministry under Responsible Government in 1855 until the present time it has been the practice for the Governor to appoint one

or more Ministers without portfolio in addition to the salaried portfolio Ministers appointed to specific offices.

These Ministers without portfolio are not appointed by the Governor to any Ministerial office, but are merely appointed by him as members of the Executive Council. They carry out any ministerial duties allotted them by the Premier, which may be to assist generally or to assist the Minister in charge of a specified Department.

The recent practice has been to appoint two Ministers without portfolio in each Ministry, but in former times the number varied from one to four.

These Ministers were until 1944 commonly referred to as Honorary Ministers because they did not receive an official salary, but in that year Parliament passed the Act No. 5052 which provided for the payment of an allowance at the rate of £250 per annum, to each of three non-salaried Ministers.

Tasmania.—There are no Parliamentary Secretaries to Ministers, so called, in this State. There are, however, one or more members of every Ministry who are Ministers without portfolio, and are known as Honorary Ministers. These Honorary Ministers often assist Ministers in their administrative work as well as their work in Parliament. They receive no official salary.

New Zealand

This subject was referred to in THE TABLE[24] for 1936. In 1945, however, the salary of a Parliamentary Secretary was increased to £800 per annum, and in 1955 to £1,500 per annum, plus an expense allowance of £400. The exercise by a Parliamentary Secretary of a power, duty or function is deemed to be conclusive evidence of his authority to do so, and he signs his own name as a Parliamentary Under-Secretary to a Minister, who is also to be named. As far as can be observed they merely assist the Minister, who is responsible for all policy matters. They do not, for instance, reply to Questions in the House on behalf of Ministers, but speeches made by Under-Secretaries are often regarded as reflecting Government policy.

The first Under-Secretary so appointed was in September, 1936, but following friction between himself and the Cabinet his appointment was revoked in December, 1939. Two Under-Secretaries were appointed in 1943 and a further one in 1945, all such appointees being members of the House of Representatives.

A Parliamentary Secretary is appointed by warrant and holds office during the pleasure of the Governor-General. His office is vacated if he ceases to be a Member.

Western Samoa.—In the Statement of New Zealand Government Policy made on March 18, 1953, His Excellency the High Commissioner said that during 1954 there were items of a political or semi-political and administrative nature which would be proceeded with as might be decided upon after discussion with the Executive Council

and in discussions which might take place in the Assembly itself. One of these matters was listed as follows:

In 1954 Executive Councillors to begin to undertake Under-Secretarial duties to increase participation and responsibility.

After much consideration the following scheme was evolved to give effect to the above paragraph:

(1) The various Departments and activities of the Samoan Government would be divided amongst the Secretary to the Government, the Treasurer (who would also become Financial Secretary), and the Attorney-General. These officers would be assisted by three elected members of the Executive Council who would be their associates.

(2) The three Official Members would:

  (*a*) Give their Associates experience in the general techniques and functions of ministerial office.

  (*b*) Ensure that in addition to this experience, their Associates should be closely associated with the Departments in the formulation of policy recommendations.

(3) The Associate Members would:

  (*a*) Understudy the Official Members with whom they were associated and familiarise themselves with the policy set out by the Government for the various Departments allotted to them.

  (*b*) Familiarise themselves with the general organisation and activities of these Departments.

  (*c*) Assist the Official Member and, where appropriate, the Departmental Head, to present in the Executive Council and the Legislative Assembly the business of these Departments.

(4) All Departments would be grouped under the three Official Members, with their Associate Members. Departments under the Financial Secretary and Treasurer, and under the Attorney General, would refer policy matters to these officers, and not to the Secretary as heretofore. Each of the Official Members would be directly responsible to the High Commissioner for the general policy and administration of the matters allotted to him and his Associate Member(s). Government policy would be formed and co-ordinated by the High Commissioner and the Fautua with the advice of the Executive Council. Normally, all matters coming up at this level would be brought before the Executive Council.

(5) The Secretary to the Government would continue to be the principal administrative officer of the Government and permanent head of the Public Service. He would be consulted by the other official members at their discretion.

(6) The principal proposals of the Departments concerned should be considered in close and continuous consultation between the Departmental Head, the Official Member and the Associate Member.

(7) Correspondence from Departmental Heads previously addressed to the Secretary to the Government would now be addressed to the Official Member concerned.

This step is conceived as a development which will, in the course of time, lead eventually to full Cabinet Government upon the British model. It is proposed at the forthcoming session of the Legislative Assembly to submit for the consideration of the Assembly—

(*a*) An amendment to the Standing Orders of the Assembly deal-

ing with the position of Associate Members and Standing Committees.

(*b*) Legislation authorising the payment to the Associate Members of a fixed salary of £600 a year.

Union of South Africa

There are no Parliamentary Secretaries appointed either in the Union Parliament or in any of the Provincial Councils or the Legislative Assembly of South-West Africa.

Ceylon

Parliamentary Secretaries are appointed by the Governor on the recommendation of the Prime Minister. Details concerning their appointment will be found in Volume XV of THE TABLE.[25]

India

The Constitution of India makes no explicit reference to Parliamentary Secretaries or Under-Ministers in respect of either the Central Government or the State Governments, the provision regarding Ministerial appointments being that—

> The Prime [*or* Chief] Minister shall be appointed by the President [*or* Governor] and the other Ministers shall be appointed by the President [*or* Governor] on the advice of the Prime [*or* Chief] Minister.[26]

Central Parliament.—Parliamentary Secretaries are appointed according to recognised Parliamentary Practice in the same way as Ministers. They do not swear any oath of office, although they take an oath of secrecy. They are provided with free accommodation, but are not paid any salary or allowances apart from what they get as Members of Parliament.

The office of Parliamentary Secretary has been declared by the Parliament (Prevention of Disqualification) Act, 1950,[27] not to disqualify its holder for being chosen as, or for being, a member of Parliament under Article 102(1) (*a*) of the Constitution.

State Parliaments.—In a number of State Parliaments, such as those of *Andhra Pradesh, Bihar, Bombay, Madhya Pradesh* and *West Bengal,* no Parliamentary Secretaries are appointed. Details are appended below which have been received from Members in three States where such appointments are made:

Madras.—Parliamentary Secretaries are appointed by the Governor to assist Ministers in the discharge of their duties both inside and outside the Legislature. They also study such files as Ministers may give to them and prepare routine notes for Ministers' use. It is open to the Government to empower Parliamentary Secretaries to make statements and speeches on their behalf in the House.

Ministers have full power to arrange with such Secretaries the method by which they shall conduct their business in the Legislative and administrative spheres.

The Madras Payment of Salaries and Removal of Disqualifications Act, 1951, provides for their salary and allowances. The Chief Parliamentary Secretary receives Rs. 600 and others Rs. 500 a month, besides a consolidated house rent and conveyance allowance of Rs. 250 a month.

Uttar Pradesh.—Parliamentary Secretaries are appointed by the Governor in consultation with the Chief Minister generally to assist the ministers in their duties, both executive and inside the Legislature. The U.P. Parliamentary Secretaries (Removal of Disqualification) Act, 1950,[28] provides that the office shall not be a disqualification for membership of the Legislature.

West Bengal.—Six Parliamentary Secretaries are appointed by the Governor. One of them, selected by the Chief Minister, receives a salary of Rs. 750 per month, the remainder one of Rs. 500.

Pakistan

No provision exists for the appointment of Parliamentary Secretaries in the Constitution of Pakistan.

Federation of Rhodesia and Nyasaland

Towards the end of 1956, two Parliamentary Secretaries were appointed in the *Federal Assembly* (Transport and Works and Home Affairs). These two members of the Government carry out the normal duties of Parliamentary Secretaries. They are not members of the Cabinet, but may attend meetings when invited by the Prime Minister. Each receives a salary of £2,250 and a tax-free allowance of £250 per annum (compare Minister, £3,250 and £500).

The *Southern Rhodesia* Constitution Letters Patent, 1923, provides for the appointment of not more than 7 Ministers. In 1940, as a temporary war measure, provision was made for the appointment also of a Parliamentary Secretary to the Prime Minister. This Act expired six months after the end of the Second World War.[29]

In October, 1957, during a long adjournment of the House, a Parliamentary Secretary for Native Affairs was appointed in terms of Section 37 of the Constitution, and in an amendment to the statute providing for payment of salaries and allowances of Ministers and Members a Parliamentary Secretary was defined as "an officer appointed under Section 37 of the Constitution who is not a member of the Executive Council".[30] Provision was also made for the payment to this officer of a salary of £2,250 per annum (less than that paid to Ministers) and a tax-free allowance of £500 per annum.

The Parliamentary Secretary appointed did not, however, carry out his functions in the House in this capacity, for before the House

resumed its 1957 session he resigned from the Todd Cabinet, with other members of the Cabinet. When the Cabinet was reformed shortly afterwards, a Parliamentary Secretary was not appointed.

Ghana

By a provision of the 1957 Constitution[31] the Governor-General, acting on the advice of the Prime Minister, may, from among the Members of Parliament, appoint Parliamentary Secretaries to assist the Ministers in the exercise of their ministerial duties. The number of such appointments may not at any time exceed the number of Ministers by more than two. The office is not vacated by reason of a dissolution until the appointment of a new Prime Minister; before taking up the duties of the office, the Member appointed is required to take the official oath.

The Colonies

Not many of the colonial territories are of such size and complexity as to necessitate the appointment of Parliamentary Secretaries. There are, however, a few in which such appointments are made, and instances are quoted below.

British Honduras.—On 28th December, 1954, the Governor wrote to the Speaker of the Legislative Assembly informing him that he was at his discretion making arrangements from 1st January, 1955, to associate six Unofficial Members of the Executive Council with the administration of certain Government Departments. These Members would be known as the Member and the Associated Member respectively for (1) National Resources, (2) Public Utilities and (3) Social Services. Their functions would be to steer the business of their departments through the Legislative Assembly, and they would be primarily responsible for raising questions relating to those departments in the Executive Council, although the latter Council retained power by majority vote to overrule or give directions to any individual Member. Responsibility for a number of departments was, however, to be reserved to the three Official Members of the Executive Council (viz., the Colonial Secretary, Attorney-General and the Financial Secretary), and the Colonial Secretary was to retain his responsibility for the general administration, establishment, recruitment, etc., of the Public Service. While the Members were to be responsible for making recommendations to the Governor in Council concerning the policy of their departments, the internal administration of their departments remained the responsibility of the permanent heads of those departments, unless the Member or Associate Member concerned were to bring to the attention of the Governor in Council his opinion that the department as organised was unable to carry out an agreed policy, or was carrying it out inefficiently.[32]

On 2nd September, in a letter to the Deputy Speaker, the Acting Governor stated that he had reviewed the operation of the Member-

ship system, and had at the request of the majority party made certain minor alterations in the original distribution of departments and subjects as between the Official and the Unofficial Members of the Executive Council.[33]

Kenya.—In Clause VII of the Royal Instructions brought into force on 15th April, 1954,[34] it was provided that—

(1) There shall be not less than three and not more than five Parliamentary Secretaries to assist the Ministers in the performance of their duties.

(2) The Parliamentary Secretaries shall be such persons as the Governor may appoint by Instrument under the Public Seal.

(3) A Parliamentary Secretary shall hold his office during the Governor's pleasure and, subject thereto, shall vacate his office at such date or in such circumstances as may be provided by the Instrument by which he is appointed, or if by writing under his hand addressed to the Governor he shall tender his resignation and the Governor shall accept such resignation.

In a White Paper[35] presented by the Secretary of State for the Colonies to Parliament at Westminster by Command of Her Majesty in March, 1954, it was stated that there would be not more than five and not less than three Under-Secretaries, of whom one would be an Arab and two would be Africans. These appointments would be political in nature, but, at any rate for the period up to 1956, they would not necessarily be drawn from Members of the Legislative Council.

In an explanatory Memorandum to the Governor as to the implementation of the Royal Instructions, the Secretary of State expressed himself as follows:

Although it is open to you to appoint persons to be Parliamentary Secretaries who are not Members of the Legislative Council, I am of opinion that, if possible, persons appointed should be Members of Legislative Council.

Five Parliamentary Secretaries were appointed under these instructions, three being Members of Legislative Council and two not, and the racial distribution being one Arab, three African, one Asian. The non-Members of Legislative Council were both Africans.

At present, although the position constitutionally is unchanged, the African Elected Members do not wish to participate in the Government and the Asian Members have not filled a vacancy created by the promotion of their Parliamentary Secretary to Ministerial status. Consequently, there are now only three Parliamentary Secretaries, two African and one Arab; one of the Africans is not a Member of the Legislative Council.

Proposals have been made which are in process of implementation and which will provide for Parliamentary Secretaries to be replaced by Under Ministers.

Nigeria.—The Governor-General of the Federation may, under s. 99 of the Constitution,[36] appoint from among the members of the House of Representatives a Parliamentary Secretary to assist any Minister in the responsibilities assigned to him. The office is not

vacated by reason of a dissolution until the appointment of a new Minister. Similar appointments may be made by the Governor of each Region[37] to assist any Regional Minister.

A Parliamentary Secretary is bound to take the oath of allegiance before entering upon the duties of his office.[38]

Sierra Leone.—There are 4 Parliamentary Secretaries, locally styled Ministerial Secretaries, in the present Government. These appointments are made by the Governor from among elected members of the party in power, on the recommendation of the Chief Minister.

Ministerial Secretaries assist and understudy their respective Ministers and are in close touch with the work of the Executive Council and the formulation of Government policy. In the absence of Ministers they answer questions in the House on matters affecting their respective ministries.

The Office of Ministerial Secretary has been declared not to be a public office for the purposes of the Sierra Leone (House of Representatives) Order in Council, 1956, other than for the purposes of section 5 thereof (which relates to the Speaker).

Trinidad and Tobago.—No provision for Parliamentary Secretaries existed under the 1950 Constitution;[39] but s. 22 of the Trinidad and Tobago (Constitution) (Amendment) Order in Council,[40] now provides that the Governor shall appoint four persons from among the Elected Members of the Legislative Council to be Parliamentary Secretaries. Such Parliamentary Secretaries may be charged with assisting a Minister in the exercise of his Ministerial duties, and are to be paid salaries of $6,960 per annum, in lieu of their salary as Members of the Legislative Council. No special provision is made in regard to oath of office.

[1] *See* THE TABLE, Vols. IV, p. 12; V, p. 19; VI, pp. 13, 15, 16; VIII, p. 11; XIII, p. 20. [2] May, 16th Ed., p. 203. [3] *See* Vols. IV, pp. 13, 15, 16; VII, p. 19. [4] July, 1958. [5] C. 47; *see* p. 173. [6] 234 *Can. Com. Hans.*, 2. [7] *Ibid.*, 25, 60, 231. [8] *Ibid.*, 283, 360. [9] *Ibid.*, 326, 820. [10] 235 *ibid.*, 1218. [11] 236 *ibid.*, 2342-2367. [12] *Ibid.*, 2342. [13] 7-8 Geo. V, c. 35. [14] 236 *Can. Com. Hans.*, 2343. [15] *Ibid.*, 2344. [16] *Ibid.*, 2344. [17] *Ibid.*, 2345. [18] The seven actually made were for Defence for Air, Finance, National Defence, Munitions and Supply, Justice, President of the Privy Council and Labour. [19] 236 *Can. Com. Hans.*, 2350. [20] *Ibid.*, 2435, 2543, 2707. [21] *Ibid.*, 2435, 2478, 2757, 2870. [22] 237 *Can. Com. Hans.*, 3152. [23] 238 *Ibid.*, 4648. [24] Vol. V, p. 33. [25] P. 227. [26] Constitution, Arts. 72 and 164. [27] Act No. XIX of 1950. [28] Act No. II of 1950. [29] *See* THE TABLE, Vol. IX, p. 47. [30] Ministers', Speaker's and Members of Parliament (Salaries and Allowances) Amendment Act No. 3, 1958. [31] S. I. (1957), No. 277, s. 16. [32] Official Gazette No. 2, dated 8th January, 1955, pp. 3-6. [33] Official Gazette No. 43, dated 9th September, 1955, pp. 405-6. [34] *See* THE TABLE, Vol. XXIII, p. 149. [35] Cmd. 9103. [36] *See* THE TABLE, Vol. XXIII, pp. 118-23. [37] Constitution, s. 120. [38] *Ibid.*, ss. 103, 122. [39] *See* THE TABLE, Vol. XIX, pp. 106-14. [40] S.I., 1946, No. 835.

IV. METHOD OF LEGISLATION FOR REGULATION OF PROFESSIONS

Answers to Questionnaires

The Questionnaires for Volumes XVII and XXIV contained the item:

> Are bills regulating Public Professions dealt with by Public or Private Acts?

and the following information has been received.

United Kingdom

No rule appears ever to have been formulated for the United Kingdom, and it is open to any corporate body representing a profession to introduce a Private Bill concerning their profession. None the less, the main public professions have in the past been regulated by Public Act. Probably the series of Medical Acts, which runs from 1858 to 1956, is the model upon which most of these statutes regulating professions have been based. The qualification and registration of doctors, dentists, veterinary surgeons, nurses, mid-wives, solicitors and architects is regulated by Public Act. Attempts have been made by Private Members' Bill similarly to regulate the affairs of hairdressers and osteopaths; but these bills did not pass. In 1955, the sanitary inspectors decided as a body to change their name. They were able to persuade a Member of the House of Commons to introduce a bill for this object; and he was fortunate enough to secure a place in the ballot at the beginning of the Session. Had this medium not been open to them, however, they would have attempted to proceed by Private Bill, and there seems no reason why they should not have succeeded. The apothecaries had a Public Act in 1874 and a Private Act in 1907; and it is perhaps worth mentioning that the medical profession were regulated, no doubt rather crudely, by the Physicians Act of 1540. If a principle can be formulated, it might be that professions begin to regulate their affairs by Private Bill, go on to Private Members' Bills, and finally achieve the doubtful advantage of regulation by Government Bill.

Channel Islands

In *Jersey* bills for the regulation of public professions are normally private bills, and follow the same course as other private bills—*e.g.*, those relating to the medical and dental professions are referred to the Public Health Committee, those relating to architects to the

Public Works Committee, and those relating to the legal professions to the Legislation Committee.

Canada

Since public professions are regulated by provincial legislation, the *Commonwealth Parliament* is not concerned with them except in the case of national professional associations, which are incorporated by private bills.

We are informed that in *British Columbia* the practice in dealing with such legislation is not consistent; some public professions have been incorporated by public act, and some by private. As neither has been questioned, no ruling has been given, and one may deduce that it is competent for the Legislature to incorporate by either method.

Australia

The practice of regulation by Public Act, usual at Westminster, is also followed in the States of the Commonwealth of Australia—*e.g.*, the Medical Practitioners Act, 1938-57; Dentists Act, 1934-46; Public Accountants Registration Act, 1945-51; Physiotherapists Registration Act, 1945-47; Auctioneers, Stock and Station, Real Estate and Business Agents Act, 1941-57; and Veterinary Surgeons Act, 1923-57, all Acts of the State Parliament of *New South Wales*, and the Medical Act and the Legal Professions Acts of the State of *Victoria*.

In *Queensland* the following professions have been dealt with by Public Act: accountants, architects, auctioneers and commission agents, dentists, doctors, nurses and masseurs, opticians, chemists, legal practitioners and veterinary surgeons.

In *South Australia* and *Western Australia* the regulating of public professions is also dealt with by public bills.

In *Tasmania* Acts for the regulation of the medical profession, architects, dentists, etc., are on the Statute Book and were treated as Public Bills. Examples of these are the Medical Act, 1918, the Dentists Act, 1919, the Veterinary Act, 1918, and the Architects Act, 1929. But a measure to deal with matters affecting private societies such as the British Medical Association or the Tasmanian Law Society would come within the scope of Private Bill procedure.

In the Parliament of the *Commonwealth* at Canberra, there is no provision for Private Bill legislation, such being dealt with by the Parliaments of the States.

Union of South Africa

In general, bills for the regulation of public professions in South Africa are public bills when matters of public policy are involved, and private bills where they are concerned with the promotion of private interests. These two aspects of the practice are respectively

best expounded in a Speaker's ruling of 1924 and a Resolution of the House of Assembly in 1951.

In 1924, Mr. Speaker Krige informed the member in charge of a private bill, which was being promoted to amend the law relating to conveyances in Natal, that the original Act[1] which it was sought to amend—

> was correctly introduced and passed as a public measure for the obvious reason that it was a measure of public policy in which the whole community of that province was interested

and that for the same reason the proposed bill should be dealt with as a public bill.

In 1951 the House of Assembly resolved:

> That in the opinion of this House the procedure followed in 1944 on the Nursing Bill of including in a public measure provisions dealing with the property, interests and constitution of an association of private nurses is undesirable, and desires to place on record that in its view legislation seeking to create a monopoly for a particular profession, trade or calling should not be introduced as a measure of public policy.[2]

For a succinct but comprehensive statement of the history and development of the practice regarding such bills in South Africa, the reader's attention is directed to the late Ralph Kilpin's *Parliamentary Procedure in South Africa*.[3]

India

No provision exists for private legislation in the Central or State Legislatures.

Pakistan

No provision exists for private legislation in the National or Provincial Assemblies. A Public Bill to regulate the qualifications and to provide for the registration of practitioners of unani, ayurvedic and homoeopathic systems of medicine was passed by the National Assembly and assented to by the President in 1957.

Federation of Rhodesia and Nyasaland

No rulings on this subject have yet emerged from the *Federal* Assembly. A study of precedents in the Legislative Assembly of *Southern Rhodesia* reveals that until recently there was no well-defined practice with regard to Bills regulating public professions, some being treated as public, others as private. For example, a bill "to provide for the registration of accountants" was introduced in 1917 as a public measure, whereas one "to provide for the qualification of architects; for the establishment and incorporation of the Institute of Southern Rhodesian Architects; and for the rights, powers, privileges and duties of the members thereof" was dealt with in 1929 as a private bill.

The question was considered by Mr. Speaker in 1948 when his attention was drawn to notices published in relation to the proposal to introduce the Engineers Registration Bill (private), which proposed to establish an institution of engineers, and went on to provide, *inter alia*, that only registered engineers could engage in practice.

Having quoted the definition of a private bill (S.O. No. 1, Private Bills), Mr. Speaker went on to say:

> It has been established that the right to practise a public profession or calling is a matter of public policy which should be dealt with as a public bill, while the establishment of private institutions or societies, the regulation of the conduct of their members, and all matters relating to the management of such bodies, can more appropriately be dealt with as a private bill.[4]

Mr. Speaker ruled that the proposed bill could not be introduced as a private measure in the form contemplated. The measure was redrafted so as to confine its provisions to matters concerning the establishment of the Institution and the management of its affairs and introduced as a private bill in 1953.[5]

In *Northern Rhodesia* the Society of Engineers (Private) Bill received its First Reading on 28th March, 1957. It lapsed owing to the prorogation of the Council in June, 1957, but was revived in accordance with the provisions of Standing Order No. 240 on 27th November, 1957, and referred to a Select Committee.

The Colonies

Not many answers have been received on this subject from colonial legislatures, since very few of these have any provision for private legislation. We are informed that in *Aden*, the *Federation of Malaya, Mauritius, Nigeria, Tanganyika* and *Trinidad*, bills regulating public professions are dealt with by public bill procedure.

In *Kenya*, where these Bills are also dealt with by Public Bill Procedure, the regulation of Public Professions is still largely in the hands of the heads of the departments most closely concerned. It is expected that the situation in this connection will change. The nursing and architects professions have come most nearly to autonomy. The Council controlling their affairs is incorporated. In the case of the medical profession, veterinary surgeons, pharmacists, architects, surveyors and advocates as well as in the case of nurses and architects the Chairman of the Board or Council is either a Government official or a nominee of the Governor.

[1] Natal, No. 23 of 1904.
[2] V. & P., 1951, p. 29.
[3] 3rd Edition, pp. 33-6.
[4] V.P., 1947, p. 471.
[5] V.P., 1953, pp. 16 and 67-8.

V. THE CONTROL OF PUBLIC FINANCE IN GREAT BRITAIN

By Sir Frank Tribe, K.C.B., K.B.E.,
Late Comptroller and Auditor General of Great Britain

General Principles

The British system of public finance is based on the principle that the House of Commons must retain control over all grants of public money. It has taken many centuries to build up the system which now prevails.

History

The most ancient of all the Offices of Control was the Auditor of the Exchequer, created in 1314, whose main function was to control the receipts of taxation by the Exchequer and the issues from the Exchequer. In 1559 the first attempt to control the spending of the issues from the Exchequer was made by the creation of the Auditors of the Imprest Office. Both these offices underwent many changes in the course of time, and it was not till the middle of the nineteenth century that Parliament brought the two offices together as part of the series of great financial reforms, broadly associated with the name of Mr. Gladstone, designed to make Parliamentary control of public expenditure really effective. These reforms culminated in the Exchequer and Audit Departments Act, 1866, which instituted the system which, with minor modifications, operates today.

Exchequer and Audit Departments Act, 1866

This Act created a new post combining the function of control over the Exchequer with that of auditing the public accounts. The full title of the new post was Comptroller General of the Receipt and Issue of Her Majesty's Exchequer and Auditor General of Public Accounts, but the holder of the post is commonly referred to as the Comptroller and Auditor General (or C. and A. G.). He is appointed by the Crown and holds office "during good behaviour", subject to removal on an address from both Houses of Parliament. He is primarily responsible to Parliament, and is quite independent of the Government. His salary, like that of judges, is payable from

the Consolidated Fund.* The staff under his control constitutes the Exchequer and Audit Department.

The sums voted by Parliament for the service of the year are appropriated by the annual Appropriation Act to the particular services as set out in the Estimates presented to Parliament. Under the Exchequer and Audit Departments Act all Departments in receipt of these Parliamentary grants are required to render an annual detailed account showing the sums expended compared with the sums granted by Parliament for the services administered by the Department. These accounts are called Appropriation Accounts: they set out the grant and expenditure under the various subheads shown in the Estimates on which the grant was based, and explanations are given of any serious divergencies between estimate and expenditure. They are signed by the officer in each Department appointed by the Treasury to act as "Accounting Officer" and have to be submitted to the C. and A. G., whose duty it is to examine them, certify their correctness and report on them to the House of Commons.

The Act also embodied the important constitutional principle of prior Parliamentary control over all issues from the Exchequer by providing that all credits requisitioned by the Treasury on the Consolidated Fund (the account into which all revenue is paid) must receive the prior approval of the C. and A. G., whose duty it is to ensure that all such issues have received prior Parliamentary approval.

Amending Acts

Since 1866 there have been a number of amending Acts, the most important of which is that of 1921. This provided that the C. and A. G. could at his discretion substitute test audit for the previous 100 per cent. audit and extended his duties on behalf of the House of Commons in relation to Revenue Accounts, Stock and Store Accounts and Trading or Manufacturing Accounts.

The latest amending Act, to which reference has already been made (see footnote * below), was passed in 1957. This provides that the C. and A. G. may authorise a principal officer of his Department to perform his statutory functions, save that an authority given to certify and report on accounts to Parliament may extend only to accounts in respect of which the Speaker has certified to the House of Commons and, where appropriate, the Lord Chancellor to the House of Lords, that the C. and A. G. is unable to do so himself. Previously the C. and A. G. had no power to delegate his functions of certifying and reporting on accounts to Parliament.

* The Exchequer and Audit Departments Act, 1957, increased the salary of the C. and A. G. to £6,000 per annum and provided that the House of Commons may from time to time by resolution increase that rate of salary.

Audit

In addition to the Appropriation Accounts referred to above, which now number about 160, the C. and A. G. also has the duty of examining and certifying a large number of other accounts, including accounts presented to Parliament in the form of White Papers. These "White Paper Accounts", as they are commonly called, cover a wide range of Government activities, some, like the Hospital accounts, directly financed from Votes of Parliament and others, like the Insurance Fund accounts, financed mainly from contributions. In all some 400 different accounts are certified by the C. and A. G. each year.

The audit falls under three main heads:

(*a*) An Accountancy Audit to establish that the accounts are a true record of receipts and payments;
(*b*) a Finance Audit, dealing with such matters as the adequacy of Departments' own methods of internal financial control, contract procedure, examination of store accounts, etc.;
(*c*) an Appropriation Audit designed to ensure that all expenditure is in accordance with the intentions of Parliament when it voted the money and that it conforms to the authority that governs it.

Staff

The staff in the Exchequer and Audit Department number about 530, of whom about 470 are directly engaged in the work of audit. Recruitment is from the general Civil Service Executive Class Examinations, and entrants have to take a three-year external course of instruction in accounting, cost accounts and constitutional and commercial law in addition to their internal training.

Committee of Public Accounts

Another of the great financial reforms in the middle of the nineteenth century was the creation of the Committee of Public Accounts. This was first set up by the House of Commons in 1861 when a resolution was passed "that a Select Committee be appointed for the examination, from year to year, of the Audited Accounts of the Public Expenditure". A resolution appointing a similar Committee in the following year was made into a Standing Order of the House. The Committee is now appointed each session under Standing Order No. 90, which reads as follows:

There shall be a select committee, to be designated the Committee of Public Accounts, for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the Public expenditure, and of such other accounts laid before Parliament as the committee may think fit, to con-

sist of not more than fifteen members, who shall be nominated at the commencement of every session, and of whom five shall be a quorum. The committee shall have power to send for persons, papers and records, and to report from time to time.

The Chairman of the Committee is, by a convention of long standing, a member of the Opposition and quite often a former Financial Secretary of the Treasury. The Financial Secretary for the time being is also regularly a member of the Committee, but does not normally attend the Committee's meetings.

The Committee have before them the annual Appropriation and other Accounts and the C. and A. G's Reports thereon. The Accounting Officers are summoned before them and examined. The C. and A. G. and representatives of the Treasury are also present as witnesses. The Clerk of the Committee is one of the Senior Clerks in the House.

The Committee's purpose is to ascertain that the expenditure of voted moneys has not exceeded the sums granted or been incurred for purposes other than those for which the moneys were granted. It is also interested in ascertaining that the department has been administered in an economical manner and that there has been no waste or extravagance. It has thus become a powerful instrument for the exposure of waste, inefficiency and financial maladministration.

The results of the Committee's inquiries are embodied in a series of Reports which are presented to the House of Commons. These Reports may be, but seldom are, debated by the whole House on a day allotted to the consideration of business of Supply. They are, however, carefully considered by the Government and especially by the Treasury, whose comments and indication of action proposed on any recommendations made by the Committee are contained in a Treasury Minute which is presented to the Committee of the following Session and considered in detail by that Committee. By this means the Committee of Public Accounts is able to satisfy itself as to the adequacy of the measures taken to give effect to its recommendations.

Working of the System

The work of the Committee of Public Accounts and that of the C. and A. G. are really complementary. The C. and A. G. has no real power other than that of reporting to Parliament. He cannot, for instance, impose any disallowances or insist on Departments complying with his views. The Committee of Public Accounts, on the other hand, would not be able, in most cases, to penetrate very far below the surface in their examination of the accounts without the reports of the C. and A. G.

The effectiveness of the whole system really depends on the standing and reputation of the Committee of Public Accounts. It again has no powers of disallowance and can only make recommendations

to the House of Commons. But by tradition those recommendations carry great weight, and though the Government may not always accept them it never rejects them without much thought and care, the results of which are embodied in the Treasury Minute on the Committee's Reports.

From the Reports of the Committee and the Treasury Minutes thereon over the last ninety years there has grown what may be called a body of "case law". This is embodied in two volumes which are called "Epitomes", and provide a guide, approved by Parliament, to the financial administration of Government Departments.

C. and A. G. and the House

The C. and A. G. in framing his reports naturally has regard to the kind of points which he thinks are likely to be of interest or concern of the Committee of Public Accounts and to Parliament as a whole. Technical accounting points can generally be settled with the Department and the Treasury without reference to Parliament, and in the main his reports deal with the following types of case:

(i) apparently wasteful or uneconomical expenditure,
(ii) apparent lack of control over expenditure or failure to collect all due receipts,
(iii) new developments, or extensions of existing activities, which involve considerable additional expenditure but have not been debated at length in Parliament,
(iv) serious discrepancies between expenditure and estimates,
(v) lack of statutory power, other than that of the Appropriation Acts, for continuing services,
(vi) information about subsidies or other objects of expenditure in amplification of that given in the estimates or accounts,
(vii) any other developments in the field of public expenditure likely to be of interest to Parliament.

The C. and A. G.'s reports are generally of a purely factual nature and seldom contain overt criticism; they endeavour to set out such of the facts of each case as are sufficient to enable the Committee to examine the matter and they generally embody any representations which the Department have made to him in support of the action they have taken. The Committee is entitled to the assistance of the C. and A. G. in its examination of the Departments, and before each meeting of the Committee it is customary for the Chairman to consider the agenda with the C. and A. G. and to discuss with him the matters arising on the report in order that he may be the better able to conduct the examination of the witnesses in such a way as to bring out all the essential facts.

The C. and A. G. makes many of his reports to both Houses of Parliament. But his work lies essentially with the House of Com-

mons owing to its special position in regard to all financial matters, and for all practical purposes the C. and A. G. is treated as an officer of the House of Commons and is given the rights and privileges enjoyed by officers of the House.

VI. "THE STRAUSS CASE"

Threat of legal action in respect of Member's correspondence with Minister

On 8th April Mr. G. R. Strauss (Vauxhall) complained of action which had been taken by the (nationalised) London Electricity Board in respect of certain criticisms of its procedure for disposing of old cables which he had submitted in writing to the Paymaster-General (the Minister at that time responsible in the House of Commons for all matters affecting the Ministry of Power). The Paymaster-General had expressed the opinion that the matter was one of administration, which concerned the Board and not himself, but had conveyed Mr. Strauss' views to the Board. A meeting had then been arranged between Mr. Strauss and the Board, after which the Board had asked Mr. Strauss to withdraw the criticisms contained in his letter to the Paymaster-General; when Mr. Strauss had declined to do this, further letters had followed, the most recent of which was from the Board's solicitors to his own, to the effect that a writ for libel would be issued against him.

Mr. Strauss submitted that this involved the privileges of the House in that any Member should have the right of bringing a matter of public interest to the attention of the Minister concerned without fear of legal action; if this were not the case, Members would be compelled to ventilate any allegation of improper action upon the floor of the House, which would not always be a desirable course.

On the motion of the Leader of the House, the matter was referred to the Committee of Privileges.[1]

Report of the Committee of Privileges, 1956-57

The Fifth Report of the Committee[2] was laid before the House on 30th October. Having briefly recapitulated the course of events which had led to Mr. Strauss' complaint, the Committee described in the following manner the questions which they considered themselves called upon to answer:

> The answer to the questions whether these threats [of legal action] constitute in themselves a breach of privilege depends, in the main, upon the meaning of Article 9 of the Bill of Rights of 1689, which declared and enacted

that "The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament". Three questions arise, namely:

(*a*) Was the letter written on the 8th February, 1957, to the Paymaster-General by Mr. Strauss (in which the statements complained of by the Board were made) part of "a proceeding in Parliament"?

(*b*) Is the threat to institute proceedings for libel in respect of a speech, debate or proceeding in Parliament an interference with the freedom of Members of Parliament so as to amount to an impeachment or questioning of that freedom in a Court or Place out of Parliament and is thus a breach of privilege?

(*c*) If the answers to (*a*) and (*b*) are in the affirmative, would the House be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges?[3]

With regard to question (*a*), it was clear to the Committee, from the terms of the Act under which the London Electricity Board had been established,[4] that the Minister had power to enquire into a Member's criticisms of the Board, and that he was answerable to Parliament for the exercise of that power. The present system of questions in Parliament did not exist at the time of the passing of the Bill of Rights, but no one would question the claim that such questions and answers were "proceedings in Parliament", even if written down outside Parliament and posted to the House. It was, moreover, a recognised and often advantageous practice for Members, instead of putting down questions or raising a matter in debate, to write to the Minister concerned.[5]

With regard to the extent of the privilege claimed in respect of "proceedings in Parliament", the Committee were in entire agreement with paragraphs 2 to 8 of the Report of the Select Committee of 1938-39 on the Official Secrets Act,[6] which they quoted *in extenso*; the kernel of these paragraphs was the contention (supported by numerous authorities) that

> While the term "proceedings in parliament" has never been construed by the courts, it covers both the asking of a question and the giving written notice of such question, and includes everything said or done by a member in the exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of parliamentary business.[7]

and that

> It would . . . be unreasonable to conclude that no act is within the scope of a member's duties in the course of parliamentary business unless it is done in the House or a committee thereof and while the House or committee is sitting.[8]

In addition, while conceding that it was always possible that the Courts might take a different view of what constituted Parliamentary privilege from that held by one of the Houses of Parliament, the

Select Committee had expressed the opinion that a conflict between the two jurisdictions was not likely to arise in practice.[9]

The Committee of Privileges drew attention to the fact that the practice of Ministers since 1947 of refusing to answer questions dealing with the day to day administration of nationalised industries did not affect Members' right to raise such matters in debate on a substantive motion or a motion for the adjournment. They went on to say:

> Where a Member of Parliament writes to a Minister concerning a Nationalised Industry and criticises the administration of that industry or the conduct of the Minister, the Statutory Authority or its Subordinate Board and is not satisfied with the reply he has from the Minister, the Authority or the Board, it is a reasonable possibility that he will seek an opportunity to debate the matter in the House. That debate would certainly be a debate or proceeding in Parliament.
>
> We adopt and follow the arguments and reasoning of the Select Committee of November, 1939, and we are of opinion that Mr. Strauss in writing to the Paymaster-General on 8th February, 1957, directing his attention to matters of administration in the London area of the Nationalised Industry of Electricity and criticising the London Electricity Board was conducting or engaged in a "proceeding in Parliament" and that in so doing he is protected by the privilege declared to belong to Parliament by the Bill of Rights, 1688.[10]

Turning to question (*b*) (see p. 40 above), the Committee concluded that the issue of a writ against a Member in respect of a proceeding by him in Parliament was an impeachment, in a place out of Parliament, of his freedom to pursue the proceeding, and that a threat to issue such a writ fell into the same category as the actual issue of service of the writ; the letters of the Board and their solicitors were, therefore, in direct conflict with Parliamentary privilege.[11]

With regard to question (*c*), the Committee reported

> The attention of the Committee was drawn, however, to an Act of 1770, entitled the Parliamentary Privilege Act, 1770, and it is contended that the effect of that Act, reading it with the Bill of Rights of 1688, is that institution (or the threat of the institution) of legal proceedings against a Member of Parliament, even in respect of his speech, part in debate, or proceeding in Parliament, cannot be treated as a breach of Privilege, that the Member must enter an appearance within the proper time to the writ and state that he intends to defend the action, and that when the matter comes before the Court, he can then claim that the Court has no jurisdiction to entertain the proceedings as he is entitled to the protection of the Bill of Rights of 1688.
>
> As the question of the effect of this Act of 1770 upon the privileges of the House as declared in the Bill of Rights of 1688 is a legal one involving the correct interpretation of these Acts of Parliament, we recommend that the opinion of the Judicial Committee of the Privy Council should be sought on the question whether the House would be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its Privileges.[12]

The relevant portion of the Act of 1770 was set out in the Minutes of the Proceedings of the Committee, as follows:

Whereas the several laws heretofore made for restraining the Privilege of Parliament with respect to Actions or Suits commenced and prosecuted at any time from and immediately after the Dissolution or Prorogation of any Parliament, until a New Parliament should meet or the same be reassembled, and from and immediately after an Adjournment of both Houses of Parliament for above the space of fourteen days, until both Houses should meet or assemble, are insufficient to obviate the inconveniences arising from the delay of suits by reason of Privilege of Parliament, whereby the parties often lose the benefit of several terms; for the preventing all Delays the King or his Subjects may receive in prosecution their several Rights, Titles, Debts, Dues, Demands, or Suits for which they have cause, be it enacted . . . that any person or persons shall and may, at any time, commence and prosecute any action or suit in any Court of Record, or Court of Equity, or of Admiralty, and in all Causes Matrimonial and Testamentary . . . against any Peer or Lord of Parliament of Great Britain or against any of the Knights, Citizens and Burgesses and the Commissioners for Shires and Burghs of the House of Commons of Great Britain for the time being or against their or any of their menial or any other servants, or any other person intitled to the Privilege of Parliament of Great Britain; and no such action, suit, or any other process or proceeding thereupon, shall at any time be impeached, stayed, or delayed, by or under colour or pretence of any Privilege of Parliament.[13]

It was finally recommended that when the opinion of the Judicial Committee of the Privy Council had been received, the matter should be again referred to the Committee of Privileges.

Evidence taken before the Committee

The length of time which had elapsed between the reference of Mr. Strauss' complaint to the Committee and the Committee's report on it was in itself an indication that the Committee had found some difficulty in reaching their conclusions; this view is amply confirmed by the Minutes of Proceedings. From these it appears that the Committee met eleven times between 11th April and 30th July, and once more on 30th October, after the summer Adjournment. Evidence was taken on four days from the Clerk of the House; the only other witness was Mr. Strauss, who made a brief appearance for the purpose of verifying that all the relevant correspondence had been handed in.

A Memorandum was submitted to the Committee by the Clerk of the House (Sir Edward Fellowes, K.C.B., C.M.G., M.C.), in which he claimed that the Act of 1770 was never intended to deal with anything other than the minor personal privileges which Members and their servants then enjoyed; this interpretation was in his opinion supported by a Report of a Select Committee of 1810, in which the view was expressed that the provisions of the Act of 1770—

merely apply to proceedings against members in respect of their debts and actions as individuals, and not in respect of their conduct as members of parliament; and therefore they do not in any way abridge the ancient law and privilege of parliament so far as they respect the freedom and conduct of members of parliament as usual.[14]

On 30th May, 1837, the House had moreover resolved—

that by the law and privilege of parliament, this House has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution or prosecution of any action, suit or other proceeding, for the purpose of bringing them into discussion or decision before any court or tribunal elsewhere than in Parliament, is a high breach of such privilege, and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon.[15]

The Clerk summarised his own view as follows—

I do not consider that the issue of a writ or notice of intention to issue a writ cannot in any circumstances constitute a breach of privilege. On the contrary I suggest that the express abandonment of the 1837 Resolution would be doctrinally a complete reversal of the attitude held for at least three hundred years by the Commons, and in practice the removal of the one sanction that protects the privilege of freedom of speech, and that with a view to making his position *vis-à-vis* the House clear to any plaintiff it is necessary to examine in what circumstances, if any, this case could fall within the scope of the immunity declared by the Bill of Rights.

The remainder of the Clerk's Memorandum foreshadowed in general the conclusion subsequently adopted in the Committee's Report (see above); but whereas the Report, in assenting to the proposition that Mr. Strauss' letter was a "proceeding in Parliament" had rested almost entirely upon the arguments of the Committee of 1939, the Clerk adduced further arguments which merit separate quotation:

The presumption in such a case [*i.e.* where a Member writes to a Minister about a matter affecting a nationalised industry] would be that the Member if not satisfied intends to initiate a parliamentary proceeding. It follows that it is not necessary at that stage for the Member to indicate the exact nature of the Parliamentary Proceeding that he is going to follow. Indeed, the Member may be uncertain what steps he can take or which of any alternative will be best for his purpose. I think therefore that to bring such correspondence within the immunity it is not necessary for it to be initiated by a reference to a possible Question or other Parliamentary Proceeding since I should have thought that that possibility was continually in the minds of both parties, or to be followed by any announcement more definite than that the Member intends to pursue the matter further, since that by implication shows that a parliamentary proceeding is intended.

I think it is also arguable that since the Government, by a deliberate act of policy publicly announced in Parliament, have substituted the Chairmen of Nationalised Industries or their Boards for Ministers in certain respects, in those same respects correspondence between Members and those Chairmen should, for the purposes of the immunity, be treated as correspondence between a Minister and a Member.

The truth is that just as Questions developed a procedure of their own in the course of the last century because of the lack of time for Motions, so letters to Ministers or their equivalents are now developing into a parliamentary procedure because of the over-crowded Question paper. The Committee of 1810 could not have envisaged the sort of procedure which the Committee of 1939 thought was within the scope of the privilege of freedom of speech. Since 1939, Nationalised Industries have raised quite novel problems involving niceties of procedure of which no Court could have knowledge. Parliamentary procedure is constantly changing and developing new forms and I think that it is for the House to take the initiative in interpreting its novel procedures in the terms of its ancient rights and immunities.

It appears from the minutes of the evidence that the reasoning of the Clerk's memorandum carried the general assent of the Committee, with one notable exception—the Attorney-General (Sir Reginald Manningham-Buller, Bt., Q.C.). Out of the 42 pages of evidence, roughly 15 were taken up by the Attorney's questions and the Clerk's answers, which together constitute as searching an examination as any Clerk is ever likely to undergo from a committee set up by his House.

Resolutions of the Committee, and consideration of Draft Reports

On 30th July the Committee came to two resolutions; the first, agreed to by eight votes to one (the dissentient being the Attorney-General) was—

> That the letter dated 8th February, 1957, written by Mr. Strauss to the Paymaster-General, was protected by the Privilege of Freedom of Speech of a Member of Parliament.

The second, agreed to by six votes to three, was—

> That the opinion of the Judicial Committee of the Privy Council should be sought on the question whether the House would be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its Privileges.[16]

The Committee did not meet again till 30th October, on which day two Draft Reports were laid before it, one compiled by Mr. Clement Davies (Montgomery), and the other by the Attorney-General. The Committee divided on the question as to which of the two drafts should be taken into consideration and resolved, by seven votes to one, to consider that of Mr. Davies.

It is convenient at this stage to summarise Mr. Attorney's rejected draft. It began by stating three general principles—namely, that privilege could not be varied by resolution of the House, that a letter written in good faith by a Member to a Minister on a matter of common interest was already regarded by the courts as privileged for the purposes of the law of libel, and that the House had of itself no power to terminate legal proceedings, even if initiated in breach of parliamentary privilege. With regard to the words "proceedings in Parliament" used in the Bill of Rights, he expressed agreement with the opinion of the Committee of 1939 that the giving of written notice of questions was such a proceeding, and that it was unreasonable to conclude that no act could be considered privileged unless done in the House or a Committee while that body was sitting. But he then went on to say:

> The letter and memorandum written by Mr. Strauss do not, of course, fall within the expression "proceeedings in Parliament" even in this extended sense. It was suggested to Your Committee, however, that the phrase should be still further extended in the light of modern conditions so as to include a letter

written by a Member to a Minister on any matter for which a Minister is answerable to Parliament. It was pointed out that the 1939 Committee reported that "cases may easily be imagined of communications . . . so closely related to some matter pending in, or expected to be brought before the House, that, although they do not take place in the Chamber or a committee room, they form part of the business of the House". Your Committee were invited to infer that, as the basis of the privilege is the protection of the Member in the performance of his duties, it would be logical to extend it to anything done by him in the performance of those duties in relation to a matter susceptible of being raised in the House.

Your Committee have no hesitation in rejecting that construction as wholly untenable. In the first place, the application of Article 9 of the Bill of Rights is limited to "speech and debates or proceedings in Parliament" and the plain meaning of those words cannot be enlarged by reference to the principle on which they are said to be based. In the second place, as is pointed out by Erskine May, the opinion of the 1939 Committee "was only concerned with the application of the Official Secrets Acts to the proceedings of an individual Member". In the third place, the question whether any particular words are spoken or written in the course of parliamentary business is a mere question of fact, the answer to which cannot in any event depend upon whether or not they are spoken in relation to a matter for which a Minister of the Crown is responsible to Parliament. Finally, it is manifestly absurd to describe as a "proceeding in Parliament" a transaction of which Parliament itself is not, and may never be, cognisant."

It followed from this that it would not be necessary for the Committee to consider how the Act of 1770 should be interpreted, although the Attorney-General expressed the opinion that proceedings instituted against a Member in breach of Article 9 of the Bill of Rights could not in fact be impeached as a breach of privilege. In view, however, of the divergent opinion of the Committee of 1810 (see p. 42), he recommended that the opinion of the Judicial Committee of the Privy Council should be sought.

In accordance with the Committee's decision, Mr. Clement Davies' draft report was considered paragraph by paragraph, and the first eighteen paragraphs (comprising the three questions which the Committee posed themselves, and the answers to the first two, which have been described above) were agreed to without much amendment. The Committee then proceeded, after a division on the substance of paragraph 19, to disagree with that paragraph and paragraphs 20-51, in the course of which Mr. Davies, with a wealth of historical instance and legal argument, had contended that the Act of 1770 did not have the effect of restricting Article 9 of the Bill of Rights. A paragraph was substituted in lieu, giving effect to the Attorney-General's recommendation that the matter should be referred to the Judicial Committee of the Privy Council, and there was then added an additional recommendation that the matter should thereafter be again referred to the Committee of Privileges. Both these latter decisions were divided upon; and the final question, that the Report, as amended, be the Report of the Committee to the House, was agreed to on division by five votes to three.

Debate on the Committee's third recommendation

On 4th December the Leader of the House (Mr. R. A. Butler), who was also Chairman of the Committee of Privileges, rose to move the following motion:

That an humble Address be presented to Her Majesty praying that Her Majesty will refer to the Judicial Committee of the Privy Council for hearing and consideration the question of law, whether the House would be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its Privileges, in order that the said Judicial Committee may, after hearing argument on both sides (if necessary), advise Her Majesty thereon; and further praying that Her Majesty, upon receiving the advice of the said Judicial Committee, will be pleased to communicate such advice to this House, in order that this House may take such action as seems to it proper in the circumstances.[18]

Before he could do so, several Members asked Mr. Speaker whether it would not be convenient if Members' observations could be somewhat wider in scope and cover certain aspects of the Report beyond the strict terms of the motion. Mr. Speaker, while declining to give any advance decision on the matter, expressed agreement with the view that it would not be out of order to signify disagreement with the motion in the light of the inquiry which had preceded it and the other recommendations which had been made.

The debate that followed lasted for five hours; there was little disposition among those who spoke to abuse Mr. Speaker's ruling by ranging too widely, but it was made clear by several speakers that support for the first two recommendations of the Committee was not unanimous, and that the future attitude and actions of the House in regard to them might well be affected by any decision to which the Judicial Committee of the Privy Council might come. Some Members expressed the opinion that the proposed reference of the matter to the Judicial Committee represented an abdication of the House's position as sole arbiter of its own privilege; Mr. Ede (South Shields) went so far as to say that "this question of Privilege, if taken outside the House, means the end of Parliamentary democracy as we know it". Mr. Herbert Morrison, on the other hand, himself like Mr. Ede a member of the Labour Party and a former Home Secretary, expressed the view that the Judicial Committee might with advantage be called upon to consider the whole question of a Member's right to write freely outside Parliament.

Mr. Butler in his opening speech announced that there would be a free vote on his motion, and the speeches of the fifteen other Members who took part in the debate indicated that the divergencies of opinion were on personal rather than on party lines; but the division with which the debate concluded showed that whereas the supporters of the motion (which was carried by 164 votes to 106) were predominantly Conservative, there were only two Conservatives and three Liberals among its opponents, all the rest being Labour.[19]

Report from the Judicial Committee of the Privy Council

Pleadings before the Judicial Committee were heard on 10th, 11th, 12th and 13th March, 1958. The Treasury Solicitor instructed Counsel to appear in support of both possible answers to the question of law submitted to their Lordships, the Attorney-General, Mr. Rodger Winn and Mr. C. H. de Waal appearing in support of the contention that the House would be acting contrary to the provisions of the Act of 1770 if it took the suggested action, and the Rt. Hon. Sir Frank Soskice, Q.C., and Mr. B. Clauson in support of the proposition that it would not. In addition, Mr. Gerald Gardiner, Q.C., and Mr. C. H. Gage were briefed to appear on behalf of the London Electricity Board.

The Report of the Committee was made to Her Majesty on 7th May, 1958, and laid before the House of Commons the same day.[20] To the question of law put before them Their Lordships answered in the negative, and the reasons for this opinion were delivered by Viscount Simonds (a former Lord Chancellor), with Lord Goddard (the Lord Chief Justice) and Lords Morton of Henryton, Reid, Radcliffe, Somervell of Harrow and Denning concurring.

Having rehearsed the origins of the case, Their Lordships made it clear that they were required to express, and expressed, no opinion on questions (*a*) and (*b*) which the Committee of Privileges had set themselves to answer (see p. 40). They went on to say:

> The Bill of Rights was enacted in 1688. In 1700 the first of the group of Acts was passed which fall for their Lordships' consideration. They are clearly of opinion and it appeared to be common ground between the parties that the ambit of the later Acts was no greater than that of the earlier. This Act must therefore be closely examined. It is the Act 12 & 13 Will. III c.3 and is entitled "An Act for preventing any inconveniences that may happen by privilege of Parliament". Its opening words which can hardly be called a preamble are significant. "For the preventing of all delays the King or His subjects may receive in any of His Courts of Law or Equity and for their ease in the recovery of their rights and titles to any lands tenements or heriditaments and their debts or other dues for which they have cause of suit or action"—here is the declared purpose of the Act, which goes on to enact that from and after the 24th June, 1701, any persons may commence and prosecute any action or suit in any of His Majesty's Courts of Record or other Courts therein enumerated against any peer of this Realm or Lord of Parliament or against any of the Knights Citizens and Burgesses of the House of Commons for the time being or against any of their menial or other servants or any other person entitled to the Privilege of Parliament at any time from and immediately after the dissolution or prorogation of any Parliament until a new Parliament shall meet or the same be reassembled and from and immediately after any adjournment of both Houses of Parliament for above the space of 14 days until both Houses shall meet or reassemble, and that the said respective Courts shall and may after such dissolution prorogation or adjournment proceed to give judgment and to make final orders decrees and sentences and award execution thereupon, any Privilege of Parliament to the contrary notwithstanding.
>
> It is convenient to pause at these words which conclude the first section of the Act and to ask what is its scope. It is not in doubt that its language is

comprehensive. It is apt to cover any suits, including suits for defamation whether in or out of Parliament, and in every case to bar the plea of any Privilege of Parliament. It should, therefore, prima facie be read in this sense. But there are considerations, which will be strengthened by later sections, pointing to a necessary limitation of its meaning. In the first place, as has already been noted, the declared purpose of the Act is to prevent delay in the bringing of those actions to which the Act relates. The Members of both Houses had long notoriously abused their privileges in respect of immunity from civil actions and arrest, which by ancient usage extended during the sitting of Parliament and for forty days after every prorogation and forty days before the next appointed meeting. It was to curtail this delay in the commencement and prosecution of suits that the Act was avowedly passed, and by clear implication it referred only to those suits which, subject to delay, were ultimately enforceable. But there was no right at any time to impeach or question in a Court or place out of Parliament a speech, debate or proceeding in Parliament. No question of delay or ultimate enforceability could arise in regard to that privilege which demanded that a member should be able to speak without fear or favour in Parliament in the sure knowledge that neither during its sitting nor thereafter would he be liable to any man for what he said and that Parliament itself would protect him from any action in respect of it either by the Crown or by a fellow subject. Here then is a strong reason for limiting the meaning of the general words which have been quoted.

In the second place the section empowers not only the subject to "commence and prosecute any action or suit" but the Court "to proceed to give judgment and to make final orders decrees and sentences and award execution thereon". The last words of the section "any privilege of Parliament to the contrary notwithstanding" must apply equally to all the preceding words. If then the Act is read so to have any application to speeches made in Parliament, the effect is substantially to repeal the ninth Article of the Bill of Rights. It is not a question of a writ being issued in a Court of Law and the defendant then making a plea in bar or a plea to the jurisdiction on the ground of privilege of Parliament. Final orders, decrees, sentences, and execution may follow the commencement and prosecution and no plea of privilege is to be available. It appears to their Lordships that a consideration of this consequence supports the view that the Act applies only to proceedings against members of Parliament in respect of their debts and actions as individuals and not in respect of their conduct in Parliament as members of Parliament, and does not abridge or affect the ancient and essential privilege of freedom of speech in Parliament. The conclusion that this privilege solemnly reasserted in the Bill of Rights was within a few years abrogated or at least vitally impaired cannot lightly be reached.

The following sections of the Act of 1700 support, or at least do not militate against, the same view. The second section provides that the Act shall not extend to subject the person of any of the Knights Citizens and Burgesses of the House of Commons or any other person entitled to the privilege of Parliament to be arrested "during the time of privilege"—a significant phrase. Section 3 again emphasises the temporal aspect of the impediment to a plaintiff pursuing his proper remedy by providing that, if he shall by reason of Privilege of Parliament be stayed or prevented from prosecuting any suit by him commenced, he shall not for that reason be barred by any Statute of Limitation or non-suited, dismissed, or his suit discontinued, but shall from time to time upon the rising of the Parliament be at liberty to proceed to judgment and execution. Section 4 makes special provision in regard to actions against the King's original and immediate debtors and other persons therein mentioned which do not appear to call for comment. Section 5 provides that neither that Act nor anything therein contained shall extend to give any jurisdiction, power or authority to any Court to hold plea

in any real or mixt action in any other manner than such Court might have done before the making of that Act. Of this section it may be safely said that it does not touch the question of privilege of freedom of speech in Parliament.

Their Lordships then observed that the Acts passed between 1700 and 1770 were in no way relevant to the question that was to be determined. Of the 1770 Act their opinion read:

Little remains to be said about it, for it is clear, as has already been stated, that it did not extend the ambit of section 1 of the Act of 1700 and that its only relevance is that it altogether abolished the time of privilege during which suits might not be commenced or prosecuted against members of Parliament.

Their Lordships have already expressed their views upon the Act of 1700 and it follows that they must answer the question referred to them by saying that the House would not be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a writ against a member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privilege.

It was stated that during the course of the pleadings the argument on both sides, in approaching the construction of the Acts of 1700 and 1770, had ranged widely over the field of Parliamentary privilege; but the large number of cases through the 17th and following centuries which were examined did not adduce any authority directly relevant to the meaning of the Act of 1770. It was upon this question, and no other, that their Lordships had been invited to pronounce. The opinion concluded:

In particular they express no opinion whether the proceedings referred to in the introductory paragraph were "a proceeding in Parliament", a question not discussed before them, nor on the question whether the mere issue of a writ would in any circumstances be a breach of privilege. In taking this course they have been mindful of the inalienable right of Her Majesty's subjects to have recourse to Her Courts of Law for the remedy of their wrongs and would not prejudice the hearing of any cause in which a plaintiff sought relief. As was justly observed by the Select Committee of the House of Commons appointed in 1810 to consider the famous case of *Burdett* v. *Abbott* (see Hatsell's Parliamentary Precedents Vol. 1 at p. 293). "It appears that in the several instances of actions commenced in breach of the privileges of this House, the House has proceeded by commitment not only against the party but against the Solicitor and other persons engaged in bringing such actions, but your Committee think it right to observe that the commitment of such party, Solicitor, or other persons would not necessarily stop the proceedings in such action." This is an aspect of the matter which cannot be ignored, for in the words of Erskine May, Parliamentary Practice, 16th Ed., page 172, "The House of Commons . . . claims to be the absolute and exclusive judge of its own privileges and that its judgments are not examinable by any other Court or subject to appeal. On the other hand the Courts regard the privileges of Parliament as part of the law of the land, of which they are bound to take judicial notice. They consider it their duty to decide any question of privilege arising directly or indirectly in a case which falls within their jurisdiction and to decide it according to their own interpretation of the law. The decisions of the Courts are not accepted as binding by the House in matters of privilege nor the decisions of the House by the Courts. Thus the old dualism remains unresolved." An example of this dualism may be seen in

the case of *Stockdale* v. *Hansard* 9 A. and E. 1 and the subsequent case of the *Sheriff of Middlesex* 11 A. & E. 273, which are part of history.

In accordance with the views expressed above their Lordships humbly report to Her Majesty that the question referred to them should be answered in the negative.

Report from the Committee of Privileges, 1957-58

On 17th June, 1958, on a motion by the Leader of the House, it was ordered, without debate, that the Report of the previous Session's Committee of Privileges, together with the Report of the Judicial Committee, be referred to the Committee of Privileges.[21] The Committee met on 24th June, called Mr. Butler to the Chair, and agreed without amendment or division to a draft Report proposed by the Chairman.

The Committee did not conceive it their duty to review the conclusions arrived at by the Committee of the previous Session, but on the basis of that conclusion made the following recommendation with regard to the case before them:

> Where a breach of a long-recognised privilege has been committed, your Committee would recommend a suitable sanction; but in the special circumstances of this case, which is the first arising out of a letter from a member of parliament to a minister which has come before the Committee of Privileges, and bearing in mind that no proceedings have been taken, your Committee recommend to the House that no further action be taken with regard thereto.[23]

Debate on the Reports of the two Committees of Privileges

The Reports of the two Committees were debated on Tuesday, 8th July, on a motion moved by Mr. Butler "That this House doth agree with the Committee of Privileges in their Reports". Once again Mr. Butler announced that there would be a free vote on the motion. Having recapitulated in some detail the course which events had taken, he emphasised that the recommendations in the first Report had gone somewhat farther than the Report of the 1939 Select Committee, which he described as "the furthest extent to which the tide, so to speak, of parliamentary Privilege had gone". Members, he said, were entitled to have regard to the facts of parliamentary life as they existed today; Ministers responsible for nationalised industries could not be questioned on their administration, and if the letters which were written to them in lieu of parliamentary questions were not held to be protected, the nationalised industries themselves would be put in a position of privilege. He also drew attention to the expense to which a member might be put if he were unable to rely on absolute privilege but forced to accept the service of a writ and then, on the case coming up in court, to claim qualified privilege. In conclusion, he expressed the view that parliamentary Privilege inured to the benefit of the citizen, not to Members; the citizen had two means of seeking redress, through Parliament or through the courts, and there had to be a balance between them.

An amendment to Mr. Butler's motion was moved by Mr. Herbert Morrison to leave out from the word "House" to the end of the question, and add instead thereof the words:

does not consider that Mr. Strauss' letter of the 8th February, 1957, was "a proceeding in Parliament" and is of opinion therefore that the letters from the Chairman of the London Electricity Board and the Board's Solicitors constituted no breach of Privilege.

The first part of his speech was addressed to a matter which had not been considered by the Committee of Privileges—namely, the precise terms of Mr. Strauss' letter to the Minister. This, in his opinion, contained language which should not have been employed, and he thought that adoption of the Report would imply that such language from a Member to a Minister was legitimate in all the circumstances and would bring Parliamentary privilege to protect it, whether it was applied to a public corporation or a private company or individual. Mr. Morrison also criticised the Committee of Privileges, first, for having made no attempt to hear evidence from the London Electricity Board, and second, for not having ensured that the Clerk of the House was in possession of the correspondence before being asked to submit a memorandum on the general matter.

Fifteen other Members took part in the debate, including notably Mr. Strauss, who defended himself with some heat against Mr. Morrison's aspersions, and the Attorney-General. The latter repeated with great cogency the arguments set forth in his draft Report (see pp. 44-5), returning throughout his speech to the proposition that the House was concerned with what were, and not what should be, the privileges of Parliament. He pointed out that Erskine May devoted no fewer than 832 pages to what it called "Proceedings in Parliament", and that even within that large compass there was no reference to correspondence with Ministers. He did not dissent from the opinion of the Select Committee of 1939 that it would be "unreasonable to conclude that no act is within the scope of a Member's duties in the course of parliamentary business unless it is done in the House or a committee thereof while the House or committee is sitting", but adduced damaging arguments against the effectiveness of the four legal authorities upon which the Committee had relied in reaching that conclusion. Finally, he argued at some length that the House by itself was incapable of preventing the mere issue of a writ, even in respect of what was a proceeding in Parliament; in any such case the proper remedy would lie with the court, which would set the writ aside. A breach of privilege occurred only when, and not before, a court entertained an action brought in relation to proceedings in parliament.

Although Mr. Attorney spoke relatively early in the debate, the quality of his speech was such that it may well have influenced the outcome; for when it came to a division, the question "That the words proposed to be left out stand part of the question" was de-

feated by the narrow majority of 218 votes to 213. In the two ensuing divisions the margin widened, the words of Mr. Morrison's amendment being inserted by a vote of 219 to 201, and the main question, as amended, being carried by 219 votes to 196. During the debate, speakers on each side had been drawn from both main parties; but the division of votes as between the parties was not dissimilar to that which had occurred on the motion of 4th December (see p. 46) almost all the majority being Conservatives and most of the minority Labour supporters. Mr. Butler was the only senior Minister who voted in favour of the motion; Sir Frank Soskice, a former Labour Attorney-General, who had appeared before the Judicial Committee in support of the Committee of Privilege's view concerning the interpretation of the Act of 1770, voted against the Committee on the current issue; and although the vote was a free one, all the whips who voted, including both Chief Whips, did so on the side which contained the majority of their party. In this manner the House, albeit by a narrow majority, declared itself opposed to the findings of its Committee of Privileges.[23]

[1] 568 *Hans.*, cc. 819-22. [2] H.C. 305 (1956-57). [3] *Ibid.*, paras. 3, 4. [4] 10 & 11 Geo. 6, c. 54, s. 6 (4). [5] H.C. 305, paras. 5-8. [6] H.C. 101 (1938-39); *see also* THE TABLE, Vol. VII, pp. 140-3. [7] *Ibid.*, para. 3. [8] *Ibid.*, para. 7. [9] *Ibid.*, para. 8. [10] H.C. 305 (1956-57), paras. 11, 12. [11] *Ibid.*, paras. 14-17. [12] *Ibid.*, paras. 18, 19. [13] *Ibid.*, p. xxvii. [14] Hatsell's Precedents (2nd ed.), 293. [15] 92 C.J., 419. [16] H.C. 305, p. xix. [17] *Ibid.*, p. xxx. [18] 579 *Hans.*, c. 393. [19] *Ibid.*, cc. 391-488. [20] Cmnd. 431 [21] 589 *Hans.*, c. 1054. [22] H.C. 227 (1957-58), para. 5. [23] 591 *Hans.*, cc. 208-396 (Daily Edition).

VII. HOUSE OF COMMONS: THE SELECT COMMITTEE ON PROCEDURE, SESSION 1956-57

By M. H. Lawrence,

A Senior Clerk in the House of Commons and Clerk to the Select Committee on Procedure, 1956-57

The appointment, on 13th November, 1956, of a Select Committee to consider certain specific aspects of procedure arose partly as the result of discussions between the "usual channels", that is the two front benches, and partly as the result of pressure from back-bench Members in all parts of the House. The Select Committee's order of reference was

to consider the practice of moving amendments on going into Committee of Supply upon the Navy, Army, Air and Civil Estimates; the practice relating to Money Resolutions; the extension of the Standing Orders relating to public money to expenditure from Funds partly, but not wholly, financed from the

Exchequer, being expenditure not directly involving a charge upon the Consolidated Fund or upon money provided by Parliament; the numbers required to form a Quorum of, and for the Closure in, a Standing Committee; and the constitution of the Scottish Standing Committee, and to report whether any changes are desirable in the Standing Orders, practice or procedure of the House in these matters or in matters connected therewith.[1]

This order of reference was not in sufficiently wide terms to satisfy all Members of the House. Previously, when in answer to a Question by Viscount Hinchingbrooke the Prime Minister had announced on 14th June, 1956, his proposal to table a motion for the appointment of a Committee, it had been objected by that Member that the terms were too narrow. He said:

May I ask, if he is aware that there are wider reforms which might be considered or reconsidered? There is, for example, the question of machinery for the control of finance by Parliament on the lines of the memorandum submitted by Lord Campion before the last Select Committee, which was approved of by the Committee. Can my Right Hon. friend hold out the hope that a Committee might be appointed next Session for such wider purposes?

The Prime Minister, replying, said that the Government were ready to hear the views of the House on the motion when it was tabled. The Leader of the Opposition for his part opposed widening the inquiry and said:

. . . broadly speaking we are in favour of a select committee being appointed and are quite agreeable to the topics which he has suggested being included for consideration. As regards the question of financial procedure, would not the Right Hon. gentleman confirm that this matter was very exhaustively considered by the previous select committee, and that it is certainly unusual that another select committee of a general kind should be appointed after nearly six* or seven years?

The Prime Minister agreed with this comment.[2]

The motion was tabled in due course and a three-hour debate took place on 31st July, 1956, during which amendments were moved to the motion, one of which was negatived on a division by 110 votes to 13 votes. The effect of this amendment, debate on which occupied two out of the three hours, would have been to have widened the Committee's order of reference to include consideration of "what other alterations, if any, in the procedure of this House, are desirable for the more efficient despatch of public business".[3]

It was, however, only eighteen months later that the House agreed to the appointment of a Select Committee with this very order of reference. This Committee, appointed on the 31st January, 1958,[4] is still sitting and will in all probability be re-appointed next session.

The Committee appointed at the end of the 1955-56 session was not able to meet, but the one which was appointed at the beginning of the next session with the same order of reference held seventeen meetings and made two Reports to the House. The First Report,[5]

* In fact the Committee had sat ten years ago, during sessions 1945-46 and 1946-47.

on 13th March, 1957, concerned matters relating to supply and financial procedure—namely:

(*a*) The practice of moving amendments on going into Committee of Supply upon the Navy, Army, Air and Civil Estimates.
(*b*) The practice relating to money resolutions, and
(*c*) The extension of the Standing Orders relating to public money to expenditure from certain Funds.

The Second Report[6] concerned matters affecting standing committees in general and the Scottish Standing Committee in particular.

The Committee were particularly anxious that in an inquiry of this sort affecting the whole House every Member who wished should have the opportunity of giving evidence. They took steps to bring this to the notice of all Members, particularly those on the back benches, but only seven Members took advantage of this. Five other witnesses gave evidence before the Committee, of whom four spoke on behalf of the Government, while the fifth was Sir Edward Fellowes, the Clerk of the House of Commons.

The practice of moving amendments on going into Committee of Supply

The background of this problem was the association in the minds of Members of the right to the redress of grievances before granting supply with moving motions on going into Committee of Supply. On this point the Clerk supplied evidence, both written and oral, which is published in the First Report.[7] Briefly, the practice of moving such motions is a modern one dating from 1811, on which occasion the Leader of the House stated that it was "a privilege which courtesy to the House required should be exercised only in cases in which loss of time was a material consideration". By 1837 the occasions had increased to only two a year, but by 1871, when a Select Committee considered the matter, the average number of amendments moved annually had risen to thirty-three, according to Sir Thomas Erskine May, who gave evidence before the committee. Mr. Speaker Denison, who also gave evidence, said that he considered grievances before Supply to be a matter of far less importance than had been the case in the past "when the King called Parliament together for the purpose of asking for money, and the House having then many points in contest with the Crown, established a rule that their grievances should be considered before the question of voting money was entertained".

The Committee of 1871 recommended that whenever the Committee of Supply stood as the first order of the day on any day except Thursday and Friday the Speaker should leave the chair without putting any question; but the House added a proviso, which had been defeated by the chairman's casting vote in committee, exempting from this rule the first occasions on which the House went into Com-

mittee of Supply on the three branches of the Estimates, and limiting amendments relating to the division of the Estimates proposed to be considered on that day. This proviso changed previous practice, which had allowed discussion on matters of public importance or urgency not necessarily connected with the votes set down, and limited it to matters which could, in effect, be discussed equally well in Committee itself. Up to 1872, and particularly in the immediately preceding ten years, the struggle between the Government and back-bench Members for the control of the time of the House had been acute and had reached deadlock. The Committee of 1871, and another of 1878, recommended abolition of the previous practice altogether: this would no doubt have suited the Government, but was objected to by the back benchers, who inserted the proviso already referred to. By the beginning of the twentieth century the so-called "progress rule" had become an integral part of procedure and of the Standing Orders and remained so until the amendments of 1947. In adopting these, the Leader of the House had assured Members that the Government would comply with the Select Committee's recommendation that opportunities for moving motions on first going into Committee of Supply on the Army, Navy, Air and Civil Estimates should be given. This had, of course, been adhered to ever since, although dependent on convention and the goodwill of the Government rather than on Standing Order.

It was held that the practice of moving an amendment to the motion to move Mr. Speaker out of the Chair on first going into Committee of Supply on the Civil Estimates did not adversely affect debate on the Civil Estimates. There was, in fact, a proposal to alter this practice, which still remains; but it was the procedure under S.O. 17 when related to the service Estimates which was the cause of discontent.

The task of the present Committee was, in fact, to resolve the conflict between those who held the view that the procedure under S.O. No. 17, as it then was, supported the inalienable right of the House to consider grievances before granting supply, and those who looked upon it as an unnecessary diversion, wasteful of Parliamentary time, susceptible of abuse, harmful to constructive debate on the service estimates, and therefore a negation of "grievances before supply".

An argument adduced in support of the latter school of thought was that the practice of balloting for the right to move amendments under S.O. No. 17 resulted in Members who had no special interest in service matters taking part in the ballot, thereby reducing the chances of successful balloting by those Members who were known to be particularly interested. This came about for two reasons: in the first place Members, particularly Members on the Government back benches, were encouraged by their whips to enter for the ballot, thus increasing the chances of "safe" amendments being moved under S.O. No. 17. This sometimes resulted in Members, successful in the

ballot but wholly disinterested in the service Estimates, not knowing what to say in their speeches and, on one occasion at least, in a Member asking a colleague to write his speech for him. It was also not unusual for such a Member to go to the Service Department to ask what the amendment was all about. Another fault in the system was that the amendment, while of course technically in order, might in substance be far removed from important service matters. Mr. Follick was able in 1951-52,[8] on the Navy Estimates, to ensure discussion of an amendment advocating a simplified system of English spelling—wasted Parliamentary time so far as the service estimates were concerned, with no possible basis of grievance before supply. The Committee, therefore, in their First Report, recommended the abolition of the practice of balloting for, and subsequently moving, amendments under S.O. No. 17 on first going into Committee of Supply upon each of the Service Estimates. This recommendation was accepted by the House on 2nd May, 1957.[9]

The practice relating to money resolutions

The task of the Committee was to ensure, so far as it was possible by recommendation, a proper balance between the extremes of a money resolution drafted in too narrow terms and one drafted too widely. A similar problem had been before a Select Committee in 1937-38. The present Committee's view was that Governments tended to err on the side of strictness when drafting money resolutions and adduced the twenty-seven occasions since the war when more than one money resolution in respect of a particular bill had had to be introduced. It was their opinion, however, that the House had satisfactory means of securing attention to its views when in its opinion money resolutions were being drafted in too narrow terms. The Financial Secretary to the Treasury, in evidence,[10] confirmed that it remained the Government's intention to abide by the instructions given to Departments and Parliamentary Counsel on 9th November, 1937,—namely that—

> . . . it is the definite intention of His Majesty's Government to secure that financial resolutions in respect of Bills shall be so framed as not to restrict the scope within which the Committee on the Bills may consider amendments further than is necessary to enable the Government to discharge their responsibilities in regard to public expenditure and to leave to the Committee the utmost freedom for discussion and amendment of details which is compatible with the discharge of these responsibilities . . .

In the opinion of the Select Committee, unequivocal support for this point of view, publicly stated anew by the Government, was all that was necessary to satisfy Members that this particular procedure was working efficiently in the interests of all Members of the House. The Government, therefore, made the required statement on 9th May, 1957.[11]

The extension of the Standing Orders relating to public money to expenditure from certain Funds

Certain funds, such as the National Insurance Fund and the Industrial Injuries Fund, are financed partly by the Exchequer, partly by contributions from insured persons and employers and partly by interest from invested balances. Since they are not financed wholly by the Exchequer they do not fall within the scope of Standing Orders, in particular S.O. No. 78, and it is possible for private Members, through their own bills, or by way of appropriate amendment to a Government bill when opportunity offers, to increase the charges on such funds, for example by way of increasing benefits even if such an increase should result in bankruptcy of the particular fund. The Committee, however, after hearing evidence from the Financial Secretary to the Treasury and the Clerk of the House, came to the conclusion that the difficulties were largely imaginary. The number of funds affected was very small, there were statutory limits to Government expenditure and legislation which sought to extend these limits would require a financial resolution, which only the Government could introduce. They therefore made no recommendation in this respect.

Numbers required for a quorum and closure in Standing Committee

The Second Report of the Select Committee, made on 2nd July, 1957, concerned the following aspects of the procedure affecting standing committees.

The number of Members on a standing committee had, since 1947, varied between twenty and fifty, excluding the Chairman appointed by Mr. Speaker, the quorum being fixed at fifteen including the Chairman. As the Committee observed—

> When, therefore, a standing committee has fifty Members a quorum is 28 per cent. of the committee; similarly, with forty-five Members, 31 per cent.; with forty, 35 per cent.; and with thirty-five 40 per cent. In the House itself a quorum is 6 per cent.[12]

In the immediate post-war years, when fifty had been the usual number of Members on a standing committee, no difficulty had been experienced. Equally, there had been none in the Parliaments of 1950-51 and 1951-55, when the Government majority was very small and it became the practice to nominate about forty-five Members to a standing committee, of whom Government supporters numbered not less than twenty-three, thereby ensuring for the Government an overall majority of one. During the present Parliament the practice changed, and it became customary for standing committees considering Government bills to consist of forty-five Members and those considering private Members' bills of thirty-five Members. The quorum, however, remained the same for all sizes of standing committee and the number required for a closure remained as high as

twenty, or 57 per cent. of a committee consisting of thirty-five Members (in the House the corresponding percentage is 16 per cent.). It seems probable, in fact, that when the House agreed, in 1947, to the figure of fifteen as appropriate for a quorum it did not consider the advisability of maintaining the closure number at the same level as that of the quorum, as it had been previously. The Government Chief Whip referred in evidence to the pressure by Members in all parts of the House for smaller standing committees and the wish of the Government that there should be a higher proportion of committees consisting of thirty-five Members for the consideration of uncontentious bills.

The Committee decided that it was right and practical for the numbers for the quorum and the closure always to be the same. They realised, however, that it was likely that in the future, as in the immediate past, the size of standing committees would vary between thirty-five and fifty, and that the quorum and closure figures for a committee of fifty were inappropriate for a smaller committee. It had become the practice for the standing committee considering private members' bills to consist of thirty-five members, and the task of keeping 40 per cent. of Members in attendance to preserve the quorum was often an impossible one for the back-bench Member seeking to steer his own bill through Parliament. Indeed, it was often unfair because, whilst his bill might be quite uncontentious, the one coming afterwards might be controversial and opponents of this latter bill would take all legitimate steps to stop it proceeding, steps which sometimes led them to seduce from attendance Members sitting on the first bill, upon the completion of which depended consideration of the next one. A closure which required 57 per cent. attendance was even more impossible to obtain. The Committee recommended, therefore, that the number of Members for the quorum and closure should be fifteen for standing committees of forty-five or more and twelve for those of forty-four or less. One point arose affecting the duties of the Clerk to a standing committee who, under Standing Order No. 57, is obliged to draw the Chairman's attention to the lack of a quorum. In the House the onus for this is, of course, upon an individual Member. There was a division of opinion in the Committee as to whether the practice of the House should be followed by standing committees or whether the rule should remain unchanged. On being put to the vote, only one Member voted in favour of a change, the rest of those present voting for the retention of the existing practice.[13]

The Scottish Standing Committee

The Committee's order of reference was to consider the constitution of the Scottish Standing Committee and to report upon desirable changes in this and in matters connected therewith. This Committee consists of the seventy-one Members representing Scottish con-

stituencies (hereinafter referred to as Scottish Members) together with a certain number of other Members added in respect of a bill or other matter. The Select Committee drew the distinction, recognised in all parts of the House, between the Scottish Standing Committee functioning as a deliberative body, when it is considering the principle of a bill before its second reading or estimates referred to it, and the same Committee sitting in a legislative capacity to consider a bill at the committee stage.

They considered that when sitting in a deliberative capacity it was right that the Committee should consist of all the Scottish Members, with the addition of such number of other Members as the Committee of Selection, in accordance with their order of reference, should think fit. They also thought that the formal description of this Committee should be the Scottish Grand Committee and that, in addition to the consideration of the principle of a bill and of certain estimates, it should consider, on two days in every Session, certain motions related to matters of particular interest to Scotland and within the administrative responsibility of the Secretary of State for Scotland such as Scottish agriculture, hydro-electric power, etc. It was also their opinion that it should consider affirmative orders applying exclusively to Scotland for which, in general, comparable orders for England and Wales were unlikely to be tabled, but that no other delegated legislation should be brought before it.

In considering the constitution of the Scottish Standing Committee in its other, and more strictly legislative, rôle, the Select Committee were faced with difficulties. Evidence had shown that there were two divergent views on the matters. Some Members thought that the Committee should always, whatever its particular function, consist of all the Members representing Scottish constituencies, and that this right of attendance was inherent in Scottish membership of the House. They recognised the inconvenience of being tied to the Committee in this way but claimed that the system of "pairing" surmounted this particular difficulty. A different opinion was held by those who attached great importance to the freedom of members from undue attendance on the Committee and who thought that the Committee, when considering bills at the committee stage, should be the same size as its English counterparts—namely, between thirty-five and forty-five Members.

The Select Committee recommended, as a compromise, that the Scottish Standing Committee, as the Committee in its legislative capacity was, and will continue to be, known, should consist of forty-five Scottish Members, nominated by the Committee of Selection in respect of each particular bill.[14] Further Scottish Members could be added to this number by the Committee of Selection "to take account fully of the individual wishes and special qualifications of Members and to ensure the due balance of parties in accordance with that in the House". In effect this meant that any Scottish Member

who informed the Committee of Selection, perhaps through the "usual channels", that he wished to serve on the Committee in respect of a particular bill would almost certainly be nominated, but that if this resulted in the balance of parties being upset in the Government's disfavour the Committee of Selection would add other Scottish Members to ensure the correct party balance. There was, in fact, an onus on Scottish Members, not selected amongst the original forty-five, to opt in, rather than contract out by "pairing". There was also the safeguard that the Committee of Selection retained the responsibility for maintaining proportional party representation, not only by adding Scottish Members but also by adding "when necessary, further Members, representing other than Scottish constituencies". This proposal of the Select Committee was, however, agreed to only after two divisions of opinion. On the first occasion the ayes totalled 9, the noes 3; on the second the ayes were 8, the noes 4.[15]

The House did not find time to debate the Second Report of the Select Committee before the session was prorogued, but within a month of the opening of the next session (1957-58) a debate took place and subsequently the Government tabled amendments to standing orders arising out of some, though not all, of the Committee's recommendations. These amendments were debated by the House on 18th December, 1957. The recommendations regarding the quorum, the closure, the use of the designation "Scottish Grand Committee" and the reference to this Committee of motions on matters relating exclusively to Scotland were accepted, but the recommendation about the size of the Scottish Standing Committee was not accepted. The Government proposed instead that this committee should consist of a nucleus of thirty Members, nominated by the Committee of Selection in respect of each bill, to which that Committee could add not more than twenty members. In all its nominations the Committee of Selection is charged to have regard to the qualifications of Members and the (party) composition of the House. The difference in composition between the Scottish and other standing committees is twofold. In the first place the nucleus of the former is thirty and of the latter twenty, whilst the maximum permitted total of added Members is in the case of the Scottish Committee twenty but in others thirty. The second difference is that the whole of the Scottish Standing Committee is nominated afresh each time a bill is committed to it, whereas the nuclei of the other standing committees do not vary greatly throughout the session.

These amendments are now incorporated in standing orders, by the decision of the House on 18th December, 1957.[16] The previous recommendation of the Select Committee concerning procedure under S.O. 17 did not, of course, require amendment of the Standing Order, since the motion to move Mr. Speaker out of the Chair to enable an amendment to be moved is only permissive. It is, per-

haps, too early to comment on the success or otherwise of the scheme except to say that the alterations in the Supply procedure were welcomed generally and that in the debate on the more controversial proposal relating to the Scottish Standing Committee differing opinions were expressed. But then this proposal of the Government did not follow the Select Committee's recommendation, and is therefore beyond the scope of this Article.

[1] 560 *Hans.*, c. 884. [2] 554 *Hans.*, cc. 759-60. [3] 557 *Hans.*, cc. 1293-1352. [4] 581 *Hans.*, c. 771. [5] H.C. 110 (1956-57). [6] H.C. 211 (1956-57). [7] H.C. 110, pp. 37-50. [8] 497 *Hans.*, cc. 777-806. [9] 569 *Hans.*, c. 376-7. (written answers). [10] H.C. 110, pp. 23-31. [11] 569 Hans., cc. *85-6* [12] H.C. 211, Report, para. 5. [13] *Ibid.*, p. x. [14] *Ibid.*, Report, para. 17. [15] *Ibid.*, p. xi. [16] 580 *Hans.*, cc. 513-568.

VIII. NEW SOUTH WALES: ATTACHMENT OF WAGES LIMITATION ACT, 1957

By L. C. Bowen,
Clerk-Assistant of the New South Wales Legislative Council.

The "Attachment of Wages Limitation Bill"[1] which came into force in New South Wales in July, 1957, could almost be called a hybrid bill. It took away from Parliamentary Officers one of their long-established privileges and, at the same time, preserved the privilege of Parliament. Not that any self-respecting Parliamentary Officer would have taken advantage of the privilege—perish the thought!

The Act is divided into two parts. The first part provides that a larger sum than hitherto be left in the hands of those whose wages or salaries have been garnisheed under a garnishee order. As the Parliamentary Draftsman succinctly puts it:

> No order for the attachment of wages or salary of any servant or employee shall be made in any case where such wage or salary does not exceed the prescribed rate per week; and where such wage or salary is at a greater rate than the prescribed rate per week an order shall be made only for the attachment of amounts of the wage or salary in excess of the prescribed rate per week. In this subsection "prescribed rate" means an amount equal to four pounds less than the Sydney basic wage.

For the information of those members of the Society whose countries do not enjoy the questionable benefits of a basic wage—or a living wage, as it is sometimes called—the basic wage is an amount fixed by the Industrial Arbitration Court as the minimum wage that must be paid to any male employee, and is based on a mysterious

table known as the "C. Index", which takes into consideration the ruling price of such essential commodities as potatoes, clothing, onions, rent, eggs, bread and so forth, which fluctuates from quarter to quarter. The outcome of these calculations is the aforesaid basic wage, which is considered to be sufficient to meet the minimum requirements of a man and his wife and two children. The basic wage in Sydney at present (April, 1958) is £13 9s., but with the numerous awards for the various trades and occupations, together with the margins for skill, the majority of employees are earning more than the basic wage.

The second part of the Act is more complex and relates to the position of employees in the service of the Crown, or statutory bodies or corporations representative of the Crown. The trend of modern legislation—in New South Wales anyway—has been to remove many functions from direct control of the Crown and to constitute boards to deal with the many activities formerly controlled by various Government departments. These boards are directly responsible for certain duties imposed by the Act constituting them, and are more or less free from ministerial control, although they are still responsible to the Crown. Whether these boards can legally be regarded as Government departments can be ascertained only by reference to the Acts under which they are constituted. For instance, the administrative and clerical staff of a statutory body who are employed under the Public Service Act may have deductions made from their salaries, whereas other employees of the same body, who are employed under ministerial authority, are not so liable. Similarly, officers and employees of the Main Roads Department are not subject to garnishee proceedings, being in the service of the Crown, but employees of such organisations as the Water, Sewerage and Drainage Board or the Milk Board are so liable.

It is a well-established rule in garnishee proceedings that moneys in the hands of the Crown are not attachable. The immediate parties to garnishee proceedings are the judgment creditor and the garnishee, and if a remedy is sought against the Crown the judgment can be declaratory only. No execution can follow upon such judgment because there are no moneys out of which damages can be paid, except moneys provided by Parliament for that purpose.[2]

A judgment creditor endeavouring to enforce a judgment by means of a garnishee may well be put to considerable embarrassment if the courts do not uphold his contention that a particular board is, in fact, subject to garnishee proceedings. It was to rectify these anomalies that the Bill was introduced to place Crown employees and employees of statutory bodies upon a uniform basis.

It was into this legislative net that the Parliamentary officers were drawn and deprived of their traditional freedom from garnishee proceedings. Section 10, subsection 12, of the Act defines "employer", and it is interesting to note, in paragraph (*a*), that, so far as Parlia-

ment House is concerned, the employer is the parliamentary Accountant:

(*a*) in respect of any officer of either House of Parliament or any person employed in either of the departments of the Legislature under the separate control of the President or Speaker, or under their joint control, the person for the time being holding the office of Parliamentary Accountant.

The essentially ever-watchful guardians of our Constitution saw in this legislation a threat to the sovereignty of Parliament, in that the provisions of the Bill applied to officers of both Houses of Parliament, and the question was raised whether the provisions would be an infringement of the Constitution Act of New South Wales by reducing the powers, duties and functions of the Legislative Council or the Legislative Assembly, which can only be done in accordance with the provisions set out in Section 7A of that Act—viz., by a Bill approved by the electors at a referendum.

To remove any doubt or conflict with the provisions of that section an amendment was inserted in the Bill by the Legislative Council which reads:

Nothing in this Section shall affect (*a*) the powers, rights and privileges of the Legislative Council or the Legislative Assembly; or (*b*) the powers, rights and privileges of or prejudice the control exercised by the President and Speaker. . . .

Incidentally, the Act authorises the department or corporation charged with the responsibility of deducting the adjudged amount from an employee's salary or wages to retain 5 per centum of the amount deductible as a fee payable by the judgment creditor for this service.

[1] Act No. 28 of 1957. [2] Mr. Justice Philimore, *Graham and ors.* v. *H.M. Commissioners of Public Works and Buildings* (1901, 2 K.B. 781).

IX. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE SOUTH AFRICAN HOUSE OF ASSEMBLY, 1957

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

Member on high treason allegation.—On the opening day of the session Mr. Speaker announced that a notification had been received from the Attorney-General of the Transvaal that Mr. Lee-Warden, Native Representative for Cape Western, was appearing at a pre-

paratory examination in Johannesburg on a charge of alleged high treason.[1]

Limitation of speech.—

(*a*) On 1st February after Mr. Barlow, an independent member, had moved the Second Reading of the *Flags Amendment Bill* and after the Prime Minister had addressed the House in support of the motion, Mr. Lawrence, speaking first in reply for the main Opposition Party, was accorded the privilege of one hour under paragraph (*b*) of S.O. No. 63 (1).[2]

(*b*) On 8th February on a motion by Mr. Hepple, Leader of the Labour Party, Mr. M. D. C. de W. Nel, speaking first in reply for the Government Party, was accorded a similar privilege, although a Minister took part in the debate at a later stage.[3]

Adjournment of debate, member moving must speak on resumption.—On 6th February in a private ruling Mr. Speaker held that the Minister who had obtained the adjournment of the debate the previous day on the Second Reading of the *Part Appropriation Bill* must on the resumption of the debate avail himself of his privilege to speak.[4]

Amendment beyond scope of motion.—On a motion dealing with stock theft on the border of Basutoland, a proposed amendment extending the scope of the motion to the whole Union was privately held to be out of order, but the member in charge of the motion was, with leave of the House, allowed to move the motion in an amended form extending its scope to the borders of other Native territories.[5]

Adjournment on matter of urgent public importance.—On 20th March Mr. President was notified by a Senator that he wished to move a motion for the adjournment of the House on a definite matter of urgent public importance—namely, the execution the next day of twenty-two Zulus sentenced for murder.

Mr. President in a private ruling disallowed the motion on the ground that the matter involved no more than the ordinary administration of the law, citing as precedent the disallowance in the British House of Commons of a similar motion for the postponement of the execution of a prisoner.[6]

Bill held to be a hybrid measure.—After the first *Separate University Education Bill* had been introduced as a public bill, Mr. Speaker in a private ruling held that the bill was a hybrid measure in that certain of its provisions proposed to divest the Councils of the University of Natal, in respect of its Medical School, and of the University College of Fort Hare, of their rights, powers and functions, and to transfer the movable and immovable property belonging to these institutions, as well as their teaching staffs, to Departments of State. When the Minister in charge was informed that the bill could not be proceeded with as a public measure, it was withdrawn and another bill introduced without those provisions.[7]

Bill held to be a public measure.—A point of order having been raised whether the second *Separate University Education Bill* should not have been introduced and proceeded with as a hybrid bill, Mr. Speaker on 20th May gave a considered ruling.

He pointed out that

> the accepted test for a public measure, as distinguished from a hybrid measure, is that it must deal with a matter of public policy affecting private rights over large areas or of a whole class.[8] In other words, a public bill deals with a matter of public policy in the interest of the community as a whole, and its provisions are applicable generally and not merely to particular individuals or specific groups or bodies.

He found that the bill was not applicable to and did not affect the private rights of only particular individuals or specific groups or bodies, and that it undoubtedly dealt with a matter of public policy and complied fully with the test as to what constitutes a public measure. The bill was subsequently read a Second Time and then referred to a Select Committee.[9]

References to speeches made by members outside the House.—A point of order having been raised as to whether the epithet "lie" or "liar" is allowable in reference to remarks made by a member outside the House, the Chairman reminded the Committee of a ruling given by one of his predecessors[10] to the effect that a member's explanation of what he said *outside* the House need not be accepted. The Chairman, however, pointed out that

> it had always been the practice that expressions such as "a lie", "liar", "deliberate untruth", etc., in regard to speeches by honourable members, whether made *inside or outside* the House, had been disallowed as unparliamentary and that the member using such an expression had been ordered to withdraw it.[11]

Bantu taxation proposals.—On the day on which the Minister of Finance was to reply to the four days' Budget debate, he gave notice of a further motion: That the House go into Committee of Ways and Means on certain taxation proposals in respect of the Bantu people. In a private ruling Mr. Speaker had previously held that as these taxation proposals had not been before the House during the four days' debate on the main taxation proposals, they should not merely stand referred to the Committee of Ways and Means as contemplated under S.O. No. 117 (2) but that the House should have an opportunity of debating them fully. Subsequently, when it was decided not to proceed with the motion it was removed from the Order Paper.[12]

It would seem highly desirable that just as all expenditure on Native Affairs and on Bantu Education forms part of the general Budget proposals presented to Parliament for consideration and discussion, proposals for taxation on the Bantu people should similarly form part of the same general Budget.

Customs duty proposal introduced at late stage.—On 11th June,

after the various taxation proposals had been considered by the Committee on Ways and Means and the usual taxation bills emanating therefrom had been introduced, the Minister of Finance gave notice that the House go into Committee of Ways and Means on a further customs duty proposal. After the proposal had been agreed to in Committee of Ways and Means and adopted by the House, an amendment giving effect to this resolution was embodied in the *Customs Amendment Bill* during the Committee stage.[13]

Senate amendments, consideration of.—When the *Native Laws Amendment Bill* was returned from the Senate with amendments and considered by the House, Mr. Speaker held privately that a member could speak once only on each amendment and for not longer than forty minutes, and that notice was required of new amendments, not being consequential, proposed under S.O. No. 198.[14]

[1] V. & P., p. 4. [2] 93 Deb., c. 490. [3] *Ibid.*, c. 827. [4] V. & P., 90. [5] *Ibid.*, pp. 9, 298. [6] *See* May, 16th Ed., p. 372, and H.C. Deb. (1920), 135, c. 930. [7] V. & P., pp. 377, 407. [8] *See* May, 16th Ed., p. 521. [9] V. & P., pp. 615-6. [10] V. & P., 1947, p. 263. [11] V. & P., p. 536. [12] *Ibid.*, p. 382. [13] *Ibid.*, pp. 741, 751, 811. [14] *Ibid.*, p. 605.

X. UNION OF SOUTH AFRICA: TRAVELLING AND SUBSISTENCE ALLOWANCE TO MEMBERS

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

Statutory provision was made in 1957 for the payment of the travelling and subsistence allowance, previously paid to members in terms of a resolution adopted by the Committee on Standing Rules and Orders during 1956.

The allowance is payable monthly to every member of Parliament, excluding Ministers and the Speaker (see South Africa Act Amendment Act, No. 2 of 1957), and in terms of a Determination by Mr. Speaker, is at the following rates—viz.:

(*a*) members who reside at their places of residence whilst attending a session of Parliament, £1 10s. per day; and
(*b*) other members, £3 per day.

The following conditions have been laid down in the Determination—viz.:

(1) The allowance shall be payable from the first day up to and including the last day on which a member actually attends a

session: Provided that in the case of a member not residing at his place of permanent residence and who is absent owing to illness at the commencement or towards the end of a session, the allowance shall, after receipt by the Clerk of the House of a medical certificate and notification in writing of the day of arrival at or departure from Cape Town, as the case may be, be payable from the date of that member's arrival or from the first day of a session, whichever is the later day, up to and including the date of his departure or the last day of the session, whichever is the earlier day.

(2) For any period of absence for which the statutory deduction of £6 per day is made from the Parliamentary allowance of a member, the amount of £1 10s. or £3 per day, as the case may be, shall also be deducted from the travelling and subsistence allowance of the member.

SCHEDULE SHOWING PARLIAMENTARY AND SPECIAL ALLOWANCES GRANTED TO MEMBERS SINCE 1910.

	Parliamentary Allowance		*Special Allowances*	*Deductions*	*Remarks*
	Amount	*Authority*			
1910	£400 per annum from date of taking seat	South Africa Act, 1909	—	£3 per day for each day of absence	—
1915	do.	do.	—	do.	No deduction if absence due to military service, *see* Removal of Disabilities (War and Rebellion) Act, No. 10 of 1915
1916	£400 per annum from date of election	South Africa Act, 1909, as amended by Act No. 21 of 1916	—	£3 per day for absence in excess of 15 days	—
1920	do.	do.	£200 per annum special temporary allowance	do.	Special allowance voted in Estimates of Expenditure
1921	do.	do.	£137 10s. per annum special temporary allowance	do.	do.
1922	do.	do.	£100 per annum special temporary allowance	do.	do.
1926	£700 per annum	South Africa Act, 1909, as amended by Act No. 51 of 1926	—	£6 per day for absence in excess of 15 days	—

SCHEDULE SHOWING PARLIAMENTARY AND SPECIAL ALLOWANCES GRANTED TO MEMBERS SINCE 1910 (*Continued*).

	Parliamentary Allowance		*Special Allowances*	*Deductions*	*Remarks*
	Amount	*Authority*			
1932	£630 per annum (*i.e.*, £700 less 10 per cent.) from 1.4.32 to 31.3.33	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926 and 21 of 1932	—	£2 per day for absence in excess of 30 days	Temporary reduction under Salaries Reduction Act, No. 21 of 1932, sec. 4; Lapsed, 1.4.33
1933	£700 per annum	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926 and 29 of 1933	—	£2 per day for absence in excess of 15 days	—
1935	do.	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926 and 43 of 1935	—	£6 per day for absence in excess of 25 days	—
1940	do. (From date poll took place or, if unopposed, from date declared elected)	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926, 43 of 1935 and 19 of 1940	—	do.	Provision in regard to absence due to military service inserted in South Africa Act and Act No. 10 of 1915 repealed
1945	do.	do.	£150 special sessional allowance	do.	Special allowance voted in Estimates of Expenditure
1946	do.	do.	£75 special sessional allowance for period ended 31.3.46	do.	do.
1946	£1,000 per annum	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926, 43 of 1935, 19 of 1940 and 21 of 1946	—	do.	Additional allowance of £1,000 per annum granted to Leader of Opposition
1951	£1,400 per annum	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926, 43 of 1935, 19 of 1940, 21 of 1946 and 66 of 1951	—	do.	(1) Additional allowance of Leader of Opposition increased to £1,300 per annum (2) £700 of Parliamentary allowance deemed to represent payments made to meet expenditure incurred by members in connection with their official duties

SCHEDULE SHOWING PARLIAMENTARY AND SPECIAL ALLOWANCES GRANTED TO MEMBERS SINCE 1910 (*Continued*).

	Parliamentary Allowance		*Special Allowances*	*Deductions*	*Remarks*
	Amount	*Authority*			
1956	do.	do.	£1 10s. or £3 per day(1) subsistence and travelling allowance for duration of session(2)	(*a*) do. (*b*) £1 10s. or £3 per day deducted from subsistence and travelling allowance for each day statutory deduction from Parliamentary allowance is made(3)	(1) The lesser amount is paid to members who reside at their places of permanent residence whilst attending a session (2) Fourth Report, Committee on S.R. and O. (1956 session) (3) In terms of resolution by above Committee (1956 session)
1957	do.	South Africa Act, 1909, as amended by Acts Nos. 51 of 1926, 43 of 1935, 19 of 1940, 21 of 1946, 66 of 1951 and 2 of 1957	do.(1)	(*a*) do. (*b*) do.(1), (2)	(1) Rates of allowance and deductions for absence in accordance with Speaker's Determination (2) Full amount of allowance deemed to represent payments made to meet expenditure incurred by members in connection with their official duties

XI. FEDERATION OF RHODESIA AND NYASALAND: CONSTITUTIONAL AND ELECTORAL CHANGES IN 1957

BY ERSKINE GRANT-DALTON,
Clerk-Assistant, Federal Assembly of Rhodesia and Nyasaland

Constitutional changes

The Constitution Amendment Act, 1957,[1] effected radical changes in the Constitution of Rhodesia and Nyasaland. As these changes are intimately connected with the new Federal Electoral Act, the two matters are dealt with here, even though the Electoral Act was not finally assented to until late in February, 1958. The enlarged house of fifty-nine members (formerly thirty-five) will be elected at a general election conducted under the provisions of the new Electoral Act, probably in September or October, 1958.

The effects of the Constitution Amendment Act are:

(*a*) to increase the number of members of the Federal Assembly from thirty-five to fifty-nine by adding twenty-four new members of whom six must be Africans;

(*b*) to enable the Federal Assembly to pass an Electoral Act for the election of fifty-three of the fifty-nine members—*i.e.*, all except the two specially appointed European members charged with special responsibility for African interests and the four specially elected African members for the two Northern Territories;

(*c*) to provide for the substitution of ordinary elected members whose race is not specified for the fifteen members (twelve African and three European) whose race is specified as and when Africans are elected among the ordinary elected members;

(*d*) to make it clear that the Territorial Courts have jurisdiction to adjudicate on questions about the registration and de-registration of voters.

At present the Federal Assembly is competent to enact an Electoral law to deal with the election of the twenty-six members whose race is not specified and who are described as "elected members". It is not competent to legislate in respect of the nine representatives of African interests, whose race is specified (three Europeans and six Africans). The election of seven of these nine is dealt with by territorial regulation and the nomination of the other two is fixed by the Constitution itself.

Under the Constitution as now amended, the power of the Southern Rhodesia Government to regulate the election of two specially elected Africans and one specially elected European is terminated and the Federal Assembly by its electoral law controls the election of these three members, besides the two additional African members for Southern Rhodesia (five in all). In the case of the Northern territories, however, the method of choosing the present six representatives of African interests remains under territorial control, but the Federal Assembly, by its Electoral law, controls the election of the four new elected African members, subject, in relation to Nyasaland, to the provisions of Article 12 (1) of the Constitution.

The Federal Assembly is thus empowered to enact an Electoral law for the election of:

(*a*) forty-four ordinary elected members;

(*b*) eight elected African members (comprising four from Southern Rhodesia and two each from Northern Rhodesia and Nyasaland);

(*c*) one specially elected European member for Southern Rhodesia—*i.e.*, fifty-three out of fifty-nine members.

Because of these changes, the nomenclature of some of the African members has been revised. The four Africans in Southern Rhodesia and the four new African members in the Northern territories are called "elected African members". The four remaining African members whose election continues to be regulated by the Northern Territorial Governments are as before called "specially elected African members".

The substitution of ordinary elected members for members whose races are specified is effected thus—

(1) If and when one or more Africans are elected at a general election among the twenty-four ordinary elected members for Southern Rhodesia, the fourteen for Northern Rhodesia or the six for Nyasaland respectively, then, with effect from the next ensuing general election, the number of seats for ordinary elected members in the relevant territory will be increased by one or more, and the number of seats for special members will be reduced to correspond. If, after this re-delimitation, at the ensuing or a subsequent general election further Africans are elected, the number of ordinary seats will again be increased and the number of special seats reduced with effect from the next general election.

(2) The reduction in the seats of special representatives will take effect first among the "elected African members", then, in the case of the Northern territories, from the "specially elected African members" and finally from among the European members. These will go last because they are an essential ingredient of the African Affairs Board. By the time their turn comes to go, the necessity for an African Affairs Board may be questioned. This subject may properly be discussed at the 1960 constitutional conference.

The provisions of the Constitution relating to the African Affairs Board are affected by the addition of the six new elected African members and by the conversion of "specially elected African members" in Southern Rhodesia to "elected African members". The additional African members increase the size of the "electoral college" within Parliament which elects the three African members of the African Affairs Board. The size of the Board is unchanged. The substitution of ordinary elected members for specially elected African members also has consequential effects. All African members are eligible both for membership of the Board and for participation in the election of African members of the Board.

The jurisdiction of the Federal Supreme Court in electoral matters is dealt with in Article 53 (*b*) of the Constitution, which confers on that Court exclusive original jurisdiction—

to determine any question as to the right of a person to be or remain a member of the Federal Assembly.

Involved in such a question may be the question of a person's right to be registered as a voter or his liability to be de-registered. There is a judicial decision to the effect that this latter question may be adjudicated only by the Federal Supreme Court. Clause 9 of the Act narrows the jurisdiction of the Federal Supreme Court in this respect. It enables the Electoral law to confer jurisdiction on Territorial Courts (which for this purpose are much more convenient) to adjudicate on questions as to registration or de-registration of voters, while retaining the exclusive jurisdiction of the Federal Supreme Court to adjudicate on vacancies and election petitions.

Pending the enactment of a Federal Electoral law for the original twenty-six ordinary elected members of the Federal Assembly, the Constitution makes transitional arrangements. Article 11 provides that in the case of the two Rhodesias the existing territorial Electoral laws could be modified by means of Governor-General's regulations for the purpose of electing the fourteen Southern Rhodesian and eight Northern Rhodesian ordinary elected members of the Federal Assembly respectively. But the power to modify these laws could be exercised only once, and they are now spent. Article 12 provides that in the case of Nyasaland, where no Electoral law existed, the Governor-General should make regulations for the election of the four Nyasaland ordinary elected members.

The constitutional amendments are designed to increase the membership of the Federal Assembly and to extend the competence of that body to legislate for all electoral purposes in regard to fifty-three of the fifty-nine members. These amendments paved the way for an Electoral Bill. There could, of course, be no guarantee that when such a Bill was introduced it would pass through all the stages necessary to translate it into law. It was necessary, therefore, to provide for the contingency of the constitutional amendments having been made but no Electoral law enacted to enable the elections to be carried through. This was achieved by amending Articles 11 and 12.[2] The amendments were designed so that the power of the Governor-General to make regulations under Article 11 with respect to elections in Northern Rhodesia and Southern Rhodesia lapsed after the Assembly elected by virtue of such regulations first met. The power to make regulations under Article 12 is to continue in existence until a date appointed by the Legislative Council of Nyasaland.

In accordance with the provisions of Article 98 of the Constitution, the above proposals had to be laid before each Territorial Legislature in draft Bill form and each Legislature had by resolution to affirm that it did not object to the introduction of the proposed Bill in the Federal Assembly. These hurdles having been overcome,[3] the Bill had, in terms of Article 97, to receive an affirmative vote of not less than two-thirds of all the members of the Assembly. The Government secured the necessary majority.[4] The African Affairs Board, having, in terms of Article 75, requested that the Bill be re-

served for the signification of Her Majesty's pleasure on the ground that it was a differentiating measure, it was necessary for that assent to be given by Order-in-Council, which Order, in terms of Article 97 (3), could not be submitted to Her Majesty unless a draft thereof had lain before each House of Parliament of the United Kingdom and neither House had, within a period of forty days beginning with the day on which the draft was laid before it, resolved that the Order should not be submitted to Her Majesty.

The draft Order-in-Council was laid before the House of Commons on 31st October, 1957, and in November a White Paper[5] giving the objections of the African Affairs Board and the Federal Government's refutation of them, was presented to Parliament. On 25th November, 1957, a member of the Opposition moved—

> That the Draft Order-in-Council, to signify Her Majesty's assent to the Constitution Amendment Bill of the Federation of Rhodesia and Nyasaland, a copy of which was laid before this House on 31st October, in the last Session of Parliament, be not submitted to Her Majesty.

This motion was defeated on a division.[6] The Order-in-Council was made by Her Majesty on 13th December, 1957.

From the above, it is easy to divine at least some of the reasons why laymen, in or out of Parliament, find the Federal Constitution difficult to understand.

Electoral changes

The Constitution Amendment Bill having become law, the Federal Assembly passed a Bill[7] to provide for the election to the Federal Assembly of elected members, elected African members and the specially elected European member and all other matters incidental thereto, drafted so that it will be applicable in Nyasaland in the event of the Legislative Council of Nyasaland passing a resolution under the provisions of paragraph (1) of Article 12 of the Constitution (the necessary resolution was made by the Nyasaland Legislative Council in March, 1958).

Under Article 10 of the Constitution, this Bill was required to obtain the affirmative vote of not less than two-thirds of all the members of the Federal Assembly at the final vote thereon, which it did,[8] and thereafter to be reserved by the Governor-General for Her Majesty's assent, which in this case did not have to be given by Order in Council, despite the objection in terms of Article 75 lodged by the African Affairs Board. Owing to this objection, however, and to the controversy over the Constitution Amendment Bill (see above) with which the Electoral Bill was closely connected, the British Government published a white paper containing the objections of the African Affairs Board, and the reply of the Federal Government thereto, in February, 1958,[9] and gave time for a debate on the matter on Tuesday, 18th February.[10] Following on this debate, the Bill was assented to on 22nd February, 1958.

The provisions of the Act which govern the manner of holding elections, the delimitation of electoral districts, the registration of voters and so on do not call for special comment: they follow the usual lines. There are, however, many important matters which are dealt with in an unusual manner, and these are commented upon below.

The Electoral Act for elections to the Federal Assembly provides for the manner of electing fifty-three members of the Federal Assembly and may eventually cover the election of all fifty-nine members (see above). The six members whose election is not at present within the scope of the Act are two specially appointed European members and four specially elected African members for the two Northern Territories. These will continue to be chosen by virtue of the provisions of Articles 9 (*c*) and 13 (2) and (3) of the Constitution until they are replaced by elected members in terms of clause 2 (1) of the Constitution Amendment Act.

The fifty-three other members consist of two groups—namely:

(*a*) Forty-four members whose race is not specified—*i.e.*, fourteen for Northern Rhodesia, six for Nyasaland and twenty-four for Southern Rhodesia.

(*b*) Nine members whose race is specified—*i.e.*, two elected African members for Northern Rhodesia, two elected African members for Nyasaland and four elected African members and one specially elected European member for Southern Rhodesia.

There are two common voters' rolls—*i.e.*, rolls open to persons of any race—which are called the general roll and the special roll. No person may be enrolled on both rolls. General roll voters are able to participate in the election of both the aforementioned groups of members, whereas the special roll voters are able to participate only in the election of African elected members, and in the case of Southern Rhodesia, the specially elected European member.

The voting rights at a general election are as follows:

(*a*) *Northern Rhodesia and Nyasaland.*—Each general voter has two votes; one for an elected member of unspecified race and the other for an elected African member. Each special voter has one vote—that is, for an elected African member.

(*b*) *Southern Rhodesia.*—Each general voter has three votes; one for an elected member of unspecified race, one for an elected African member and one for the specially elected European member. Each special voter has two votes; one for an elected African member and one for the specially elected European member.

(*c*) *In the Federation as a whole*, all persons registered as Federal voters at the date of coming into force of the new Electoral Act will automatically be enrolled as voters on the general roll. In the case of Nyasaland, where there are different rolls for purposes of Federal elections and Territorial elections of non-African members, persons

on the Territorial rolls will also be entitled to automatic enrolment on the general roll; even if they are not on the existing roll of Federal voters.

As regards new voters, the following requirements are common to persons seeking registration on either the general or the special roll:

Age: Twenty-one years and upwards.

Nationality: Citizenship of Rhodesia and Nyasaland or status of British protected person by virtue of connection with Northern Rhodesia or Nyasaland.

Residence: Two years' residence in the Federation and three months in the constituency.

Declaration of Allegiance: Prospective voters must make a solemn declaration of allegiance to the Queen.

Literacy in English: Prospective voters must be able to speak, read, write in and understand English and to complete the prescribed form of application for registration as a voter before a Registering Officer, or Commissioner of Oaths or Justice of the Peace.

Married Women: A wife will be deemed to have the means qualification of her husband, but in the case of a polygamous marriage, this privilege will apply only to the first wife. Wives must have literacy in English and any educational qualifications in their own right.

The means and educational qualifications differ as between general and special voters. Where income is a qualification, it must in any case have been earned for a continuous period of two years. Where ownership of immovable property is mentioned, long leasehold tenure will be included on the basis of the value of the unexpired term. It must be immovable property within the Federation.

Once a person has qualified as a voter, he remains entitled to vote despite reduction in income or immovable property qualification.

To be registered as a general voter, a person must have one of four alternative qualifications—viz.:

(*a*) Income of £720 per annum or ownership of immovable property valued at £1,500.

(*b*) Income of £480 per annum or ownership of immovable property valued at £1,000 plus the completion of a primary course of education of a prescribed standard.

(*c*) Income of £300 per annum or ownership of immovable property valued at £500, plus the completion of a four-year course of secondary education of a prescribed standard.

(*d*) Being a minister of religion, who has undergone certain stipulated courses of training and periods of service in the ministry and who follows no other profession, trade or gainful occupation.

(*e*) Being a Chief as defined in the Act.

To be registered as a *special* voter, a person must either (i) have income of £150 per annum or own immovable property valued at £500, or (ii) have income of £120 per annum plus the completion of a two-year course of secondary education of a prescribed standard.

The special roll will be discontinued in a territory when, in the case of Southern Rhodesia, all the five special representatives have been replaced by elected members whose race is not specified, and, in the case of the Northern Territories, when the two additional African members are replaced by elected members whose race is not specified.

The Act provides for a tribunal to make periodic assessments of the value of money and the income or property qualifications are adjusted accordingly.

A candidate for election as one of the forty-four members whose race is not specified must be a general voter; other candidates may be voters on either the general or the special roll. All candidates must have resided five years in the Federation.

The provisions of a Federal Electoral Act cannot apply in Nyasaland until the Legislative Council of that Territory passes a resolution to that effect; until then, elections continue to be governed by regulations made by the Governor-General with the agreement of the Governor of Nyasaland and the approval of the Secretary of State. The necessary resolution was in this instance adopted by the Nyasaland Legislative Council in March, 1958.

It should be noted that the Federal Electoral Act makes no provision for the "alternative vote" as adopted in 1957 by Southern Rhodesia, one of the Territories of the Federation (see p. 170).

[1] No. 16, 1957. [2] *See* ss. 4 and 5 of the Act. [3] 1957 *N. Rhod. Hans.*, cc. 28-74; 1957 *Nyas. Hans.*, pp. 10-28; 1957 *S. Rhod. Hans.*, cc. 2003-25; *Fed. Assem.* V. & P., 1957, p. 8. [4] 8 *Fed. Assem. Hans*, c. 665. [5] Cmnd. 298. [6] 578 *Com. Hans.*, cc. 808-940. [7] Act No. 6, 1958. [8] 8 *Fed. Assem. Hans.*, c. 2199. [9] Cmnd. 362. [10] 582 *Com Hans.*, cc. 1097-1168.

XII. THE BIRTH OF GHANA: A CONSTITUTIONAL SURVEY FROM 1954 TO 1957

By K. B. Ayensu, M.A.,
Clerk of the National Assembly of Ghana

The provisions of the Gold Coast (Constitution) Order in Council, 1954, were summarised in Volume XXIII of THE TABLE[1] (1954). Amendments to that Order were promulgated in 1955 and 1956.[2] These amendments dealt with property compulsorily acquired, the Public Service and the Judicature.

The First Session of the Legislative Assembly under the 1954 Constitution commenced on 27th July in that year.[3] Before His Excellency the Governor addressed the Assembly on 29th July he delivered the following Message from Her Majesty the Queen—

I have observed with sincere pleasure the steady advance towards self-government made in recent years by My people in the Gold Coast. Three years ago, Gold Coast Ministers and the Assembly were called on to assume responsibilities for the Government of the country, the well-being of its peoples and the development of its natural wealth. It is a source of deep satisfaction to Me that these responsibilities have been so faithfully discharged and that it is now possible for the Gold Coast to take a further step towards assuming full responsibility within the Commonwealth for its own affairs. This step, marked to-day by the opening of the Assembly chosen wholly by direct election, is intended to be the last before that goal is reached.

I am confident that this new Assembly and Government, invested with powers and responsibilities greater than the elected representatives of the Gold Coast have ever before enjoyed, will undertake their fresh tasks with energy and wisdom. I shall continue to watch with deep and abiding interest the progress of all My people in the Gold Coast with whose welfare you have been entrusted and whose true interest it is your high duty to serve.

After delivering the gracious Message His Excellency the Governor conveyed a message of goodwill from the Rt. Hon. Oliver Lyttelton who was described as "lately one of Her Majesty's principal Secretaries of State". In the message he referred to his visit to the Gold Coast in 1952 and to the promise he then made that the United Kingdom Government would consider proposals for a constitutional change when these had been formulated by the Gold Coast Government after full discussion in the country.

In his Speech His Excellency said that the new Constitution had assigned greater responsibilities to the people of the Gold Coast, and the Government regarded this "as the last stage in the development of the Gold Coast towards Independence". The Government would re-open negotiations with the United Kingdom Government with a view to the achievement of Independence within the Commonwealth. The Government was in full agreement with the proposals of the United Kingdom Government for the future of Togoland under United Kingdom Trusteeship. It would be the intention of the Gold Coast as an independent nation within the Commonwealth to seek admission to membership of the United Nations. It had been the policy in the Gold Coast "to develop parliamentary government and an atmosphere of dignity and worthy debate", and the Government would seek by all possible means to maintain and enhance the status of the Assembly, and to foster the establishment of parliamentary conventions in the best traditions of democratic government.[4]

The First Session having been prorogued on 9th November, 1954,[5] the Second Session of the Assembly commenced on 15th February, 1955.[6] His Excellency began his Speech with a reference to Togoland under United Kingdom Trusteeship. He said that since he last addressed the Assembly the Fourth Committee of the United Nations

Organisation had directed the Trusteeship Council to consider how the wishes of the people of that territory regarding their future should be ascertained. The 31st of July, 1955, would be the date for the coming into effect of sections 56 and 63 of the Gold Coast (Constitution) Order in Council, 1954. On that day a profound change would take place whereby the Secretary of State would cease to have responsibility for any Civil Servant in the Gold Coast and the legal control of the Civil Service machine would become complete. It was the Government's hope to achieve Independence within the life of that Assembly (a hope which was not to be fulfilled).

On 5th April, 1955, the Prime Minister moved the following motion—

> That this Assembly approve the appointment of a Select Committee to examine the question of a federal system of government in the Gold Coast and the question of a Second Chamber which had been raised in certain quarters, and, after consultation with responsible bodies or individuals, to make recommendations for the consideration of the Legislative Assembly.

After the question had been proposed, the Leader of the Opposition said the Opposition would not take part in the debate. His reasons were, one, that the matters to be discussed by the Select Committee appertained to the Constitution which the Prime Minister himself had earlier admitted should be discussed as a single exercise and not piecemeal and, two, the drafting of a Constitution was a matter for a Constituent Assembly and not for the Legislative Assembly which, by the very nature of the 1954 Constitution, was not "fully representative of all the national interests and assets". Accordingly the Members of the Opposition groups walked out of the Assembly and the motion was agreed to without a division.[7] The next day the Select Committee was nominated exclusively of members of the Government party.[8]

The report from the Select Committee was presented to the Assembly on 26th July, 1955, and the Prime Minister moved a motion for its adoption on 8th August. The Opposition groups abstained from the debate and the motion was agreed to without a division.[9] The Select Committee recommended that a federal system of government would not be suitable for an independent Gold Coast and that it was inopportune to consider a Second Chamber.

In 1955 at the request of the Gold Coast Government the Secretary of State appointed Sir Frederick Bourne to advise the Government and all parties on the problems connected with the devolution of authority to Regions. Sir Frederick began work in October and submitted his report in December.[10] In the introduction to his report he explained that the Opposition groups had declared themselves unable to afford him the opportunity of consultation on stated grounds. He, however, referred to a document entitled "Proposals for a Federal Constitution for an independent Gold Coast and Togoland" which was published about the middle of 1955 by them. The proposals

were in fact presented as an outline only, the details being left to be discussed by a Constituent Assembly. Sir Frederick pointed out that under the 1954 Constitution responsibility for the government of the country had been conferred on the Legislative Assembly and the Cabinet, under the general supervision of the Governor with reference, when occasion demanded it, to the Secretary of State. That responsibility could not be transferred to any other body, nor would a Constituent Assembly appointed in the manner suggested by the Opposition groups have any authority.

In his report Sir Frederick recommended the establishment of Regional Assemblies and Councils of Chiefs. The objects of Regional Assemblies were given as follows—

> (i) to afford an effective link between Regions and the Central Government and thereby to remove any danger of excessive centralisation;
> (ii) to provide for the formation and ventilation of local opinion on matters of national importance;
> (iii) to procure the use of local knowledge and experience to ensure that legislation is devised and implemented and schemes and projects involving expenditure in the Region designed, and the required money provided, in a manner suited to the circumstances of the Region concerned.

The Councils of Chiefs were to provide the means whereby the experience of Chiefs could be utilised. Sir Frederick suggested that for the general good of the Regions the following provisions should be embodied in the Constitution—

> (i) that no measure affecting the traditional function or privileges of a Chief or Chiefs in a Region or Regions, whether a Regional Assembly shall have been established or not, shall be introduced in the Legislative Assembly without prior consultation with the Chief or Chiefs concerned. Any views received as a result of such consultation shall be circulated to all members of the Legislative Assembly and shall be laid before the House for debate and determination by a free vote without respect to party affiliations, before such measure is read for the first time;
> (ii) in any Region in which a recognised Council of Chief exists it shall be open to such Council at their pleasure to tender advice on any subject of regional importance to the Regional Assembly; and similarly the Regional Assembly should normally seek the advice of such Council on such matters. Advice received under this clause shall be laid before the Regional Assembly concerned for debate and determination of the question involved.

In February, 1956, the Prime Minister convened a conference to consider the report of Sir Frederick Bourne. The conference which was under the chairmanship of Mr. C. W. Tachie-Menson, then a member of the Public Service Commission, was held at Achimota School, and came to be known as "the Achimota Conference". Sir Frederick returned to the Gold Coast and participated in it. As he had not been able to achieve all the objects of his mission, the aim of the conference was to proceed further with his task. The Opposition groups did not see their way clear to accept the Prime Minister's in-

vitation to be represented at the conference. The Achimota Conference, which reported in March, 1956,[11] used Sir Frederick Bourne's report as a working basis and made detailed recommendations regarding the composition of Regions, Regional Assemblies, Houses of Chiefs and other matters.

On 11th May, 1956, the Secretary of State made a statement in the British House of Commons regarding the differences in the Gold Coast regarding the form of Constitution under which the country should attain Independence. He made it clear that because of the failure to resolve these differences, the Gold Coast Government and the British Government could achieve their common aim of early Independence within the Commonwealth only by demonstrating to the world that the peoples of the Gold Coast had had a full and free opportunity to consider their Constitution and to express their views on it at a general election. The Secretary of State went on and pledged—

> If a general election is held, Her Majesty's Government will be ready to accept a motion calling for Independence within the Commonwealth passed by a reasonable majority in a newly elected legislature and then to declare a firm date for this purpose.[12]

The Second Session of the Assembly having been prorogued in April, 1956, the Third Session commenced on 15th May of that year. In his Speech His Excellency said that when in 1954 he delivered the gracious Message from Her Majesty the Queen it was not then apparent that there would be differences regarding the basic form of the Constitution under which the Gold Coast should attain Independence. The Government had taken a number of steps to resolve these differences. In December, 1954, the Prime Minister had invited the President of the Asanteman Council and the Chairman of the National Liberation Movement to meet Ministers to discuss the differences which had arisen. The invitation had been declined as had been the second invitation issued the following February. In 1955 the Opposition had felt unable to participate in the Select Committee appointed to consider the question of federal government and a bicameral legislature. Later that year they had again felt unable to co-operate with Sir Frederick Bourne. Early in 1956 they had refused to participate in the Achimota Conference. It did not therefore appear to the Government that any useful purpose would be served by attempting to arrange further conferences on the Constitutional issue and that, therefore, the Government would submit its Constitutional proposals for debate in the Assembly, whereupon the Government would go to the country to seek a mandate from the people for the immediate grant of Independence. The plebiscite to which His Excellency had referred in 1955 had been held in Togoland and the majority of the inhabitants of that territory had voted in favour of union with the Gold Coast. It remained for the Trustee-

ship Council to examine those results and for the United Nations to determine the future of that territory.[13]

To the motion of thanks for the Governor's Speech the Opposition moved an amendment regretting the Government's proposal for the Assembly to debate partisan Constitutional proposals instead of proposals carrying a substantial agreement of the people of the Gold Coast as envisaged by the Secretary of State.[14]

A Government White Paper on Constitutional Proposals for Gold Coast Independence (embodying a statement on the report of Sir Frederick Bourne) was presented to the Assembly in May, 1956. On 18th May the Prime Minister moved that the White Paper be adopted[15] and the motion was agreed to on 22nd May, the Opposition abstaining from the debate.[16] The first Legislative Assembly under the 1954 Constitution was dissolved the same day.

At the general election which was held in July, 1956, the Government party gained two-thirds of the seats. The First Session of the Second Legislative Assembly under the Constitution commenced on 30th July, 1956.[17] In his Speech the next day His Excellency the Governor referred to the statement made in the British House of Commons by the Secretary of State on 11th May, 1956. He said that the general election having been held, the Government would during that week introduce into the Assembly a motion calling for Independence within the Commonwealth. On 1st July the Government had assumed full financial responsibility for the military forces of the Gold Coast, and on the same day it had taken over control and direction of the Gold Coast military forces.[18]

To the motion of thanks for the Governor's Speech the Opposition moved an amendment regretting that the Government had decided to introduce a motion calling for Independence without an agreed Constitution. The amendment was defeated and the motion agreed to.[19]

On 3rd August, 1956, the Prime Minister moved a motion as follows—

> That this Assembly do authorise the Government of the Gold Coast to request Her Majesty's Government in the United Kingdom as soon as practicable this year, to procure an agreement by the United Kingdom of an Act to provide for the Independence of the Gold Coast as a sovereign and independent state in the Commonwealth under the name of Ghana.[20]

The motion was agreed to, and although the Opposition members were not present the House divided (Ayes: 72, Noes: Nil), in order that the question of a "reasonable majority" might be the more easily determined.[21] The Assembly had a membership of 104.

On 18th September, 1956, the Prime Minister made a statement in the Assembly to the effect—

> (i) That Her Majesty's Government in the United Kingdom had agreed to introduce into the United Kingdom Parliament a Bill to accord Independence to the Gold Coast and, subject to parliamentary approval,

Her Majesty's Government intended that full independence should come on the 6th of March, 1957;

(ii) a plebiscite conducted in Togoland under United Kingdom Trusteeship in the presence of United Nations observers in May had resulted in a clear majority vote in favour of union with an independent Gold Coast. The Trusteeship Council of the United Nations had passed a resolution in July noting that the will of the majority of the inhabitants for union with an independent Gold Coast and recommending that steps should be taken for the trusteeship agreement to be terminated upon the attainment of Independence by the Gold Coast. Provided that that resolution was endorsed by the General Assembly of the United Nations appropriate action will be taken to include that territory within the independent Gold Coast;

(iii) Her Majesty's Government have noted the desire that the name of the Gold Coast should be changed to Ghana upon the attainment of Inpendence and that the necessary legal steps will be taken to give effect to this desire.

The Opposition, through their Deputy Leader, welcomed the statement and said they hoped the differences existing regarding the form of the Constitution would be resolved before the date fixed for Independence.[22]

On the following day the Prime Minister stated in the Assembly that the Government had proposed that the Assembly should have ample opportunity to debate and determine the country's Constitution and that it would at the earliest practicable date publish a White Paper setting forth the detailed provisions of the proposed Constitution. The Government would be willing to discuss Constitutional questions outside the Assembly with representatives of the Opposition. The Opposition replied that if the opportunity for discussion was genuinely offered it would be accepted.[23]

On 12th November a White Paper on the Government's Revised Constitutional Proposals for Gold Coast Independence was presented to the Assembly and the Prime Minister moved a motion for its adoption. The Opposition moved an amendment to the motion to the effect that the Assembly should approve the Government's policy embodied in the White Paper to secure an agreed Constitution in talks outside the Assembly with representatives of the Opposition and the Territorial Councils, and, in pursuance of that policy, devise ways and means to secure an agreed Constitution. After a debate lasting three days, the amendment was defeated on 14th November and the motion agreed to, the Assembly dividing—Ayes: 70, Noes: 25.[24]

On 18th December, 1956, the British House of Commons passed the Ghana Independence Bill[25] which was then passed by the House of Lords on 5th February, 1957.[26] The Act received the Royal Assent on 7th February.[27] Even after that date differences still existed regarding the form of a Constitution and the Secretary of State, the Rt. Hon. Alan Lennox-Boyd, came to the Gold Coast in February in an attempt to resolve them. It is generally believed that it was as a result of this visit that final agreement was reached.

On 22nd February, 1957, the Ghana (Constitution) Order in Council, 1957,[28] was made at the Court at Buckingham Palace, London. The Constitution provides for the appointment of a Governor-General, for the constitution of whose office Letters Patent were passed under the Great Seal of the Realm and for whom Instructions were passed under the Royal Sign Manual and Signet on 22nd February. The Constitution provides *inter alia* for the following—

(i) a Cabinet of Ministers of not less than eight persons, being Members of Parliament;
(ii) a Parliament consisting of the Queen and the National Assembly, the latter consisting of a Speaker and not less than one hundred and four Members;
(iii) a Public Service and a Commission to control it;
(iv) a Judicature and a Judicial Service Commission; and
(v) the division of Ghana into five Regions and the establishment by Act of Parliament of a Regional Assembly and a House of Chiefs in each Region.

On 6th March, 1957, the sovereign and independent state of Ghana came into being and its first Parliament was opened by Her Royal Highness the Duchess of Kent, who was the Queen's special representative at the Independence celebrations. The Speech from the Throne contained the following Message:

> The hopes of many, especially in Africa, hang on your endeavours. It is My earnest and confident belief that My people in Ghana will go forward in freedom and justice, in unity among themselves and in brotherhood with all the peoples of the Commonwealth. . . .[29]

[1] Pp 102-4. [2] S.I., 1955, Nos. 1218 and 1219; S.I., 1956, No. 997. [3] 1954 *Hans.*, c. 2. [4] *Ibid.*, cc. 13-18. [5] *Ibid.*, c. 540. [6] 1955 *Hans.*, c. 1. [7] *Ibid.*, cc. 1878-91, 1911. [8] *Ibid.*, cc. 1918-20. [9] *Ibid.* (Vol. 2), cc. 359-400, 411-452. [10] Published by Authority (unnumbered). [11] Report published by Authority (unnumbered). [12] 552 *Com. Hans.*, cc. 1557-8. [13] 1956-57 *Hans.*, cc. 2-4. [14] *Ibid.*, c. 29. [15] *Ibid.*, cc. 125-31. [16] *Ibid.*, c. 277. [17] 1 *L.A. Hans.*, c. 1. [18] *Ibid.*, cc. 9-10. [19] *Ibid.*, cc. 21-122. [20] *Ibid.*, c. 124. [21] *Ibid.*, cc. 179-80. [22] *Ibid.*, cc. 1039-42. [23] *Ibid.*, cc. 1089-90. [24] 2 *L.A. Hans.*, cc. 11-70, 73-154, 162-246. [25] 562 *Com. Hans*, c. 1211. [26] 201 *Lords Hans.*, c. 471. [27] *Ibid.*, c. 631. [28] S.I., 1957, No. 277. [29] 1 *Parl. Deb.*, cc. 3-6.

XIII. GHANA: CHAIRMAN OF AN INTERIM REGIONAL ASSEMBLY RESTRAINED FROM HOLDING THAT OFFICE

By J. H. Sackey,
Assistant Clerk of the National Assembly

Under the Ghana (Constitution) Order in Council, 1957, the country is divided into five political and administrative Regions.[1] There is also provision for the establishment, in and for each Region, of a Regional Assembly, a body endowed with functions and powers at regional level in the fields of local government, agriculture, animal health and forestry, education, communications, medical and health services, public works, town and country planning, housing, police and such other matters as Parliament may from time to time determine.[2]

But before the actual establishment of the Regional Assemblies, it is provided[3] that Members of Parliament representing electoral districts within a Region shall constitute an Interim Regional Assembly for that Region. The Speaker of the National Assembly is charged with the responsibility of convening a meeting of each Interim Regional Assembly as soon as conveniently may be after the coming into force of the Order in Council, and presiding as Chairman at each meeting until the Interim Regional Assembly has formulated rules for regulating its own procedure and appointed its own Chairman.[4]

The Interim Regional Assembly is vested merely with advisory powers and its existence ceases with the establishment of the Regional Assembly itself.[5]

At the instance of the Speaker, the Interim Regional Assemblies of the five Regions started to meet for the first time on 25th April, 1957. Draft Standing Orders, prepared at the direction of the Speaker, were circulated for the consideration of members of each Interim Regional Assembly. These were to be amended as members of each Assembly thought fit, upon the question that the draft Standing Orders be adopted: if the question was to be negatived in its original or amended form, any member might move the adoption of a fresh set of Standing Orders, provided that the Chairman was aware of them and members had had a reasonable opportunity of studying them.

The first meeting of four of the Interim Regional Assemblies passed off without any noteworthy incident. The draft Standing Orders were adopted with slight modifications and Chairmen were elected from among the membership of the Assemblies.

The first meeting of the Ashanti Interim Regional Assembly, however, provided some excitement. The Speaker of the National Assembly, acting as Chairman, opened the meeting with introductory remarks about the composition and functions of Interim Regional Assemblies as set forth in the Ghana (Constitution) Order in Council. On the question of the election of a Chairman, the Speaker averred that in his view Members would be well advised to choose a Chairman from inside the membership of the Interim Regional Assembly: Section 21 of the Ghana (Constitution) Order in Council, 1957, fortified him in his view. There, the Speaker could clearly come from within or without the National Assembly, but though it was not so clearly stated in regard to the Chairmanship of the Interim Regional Assemblies he would advise members to simplify matters by electing the Chairman from among their own number.

A lengthy discussion thereupon took place, some members (Government supporters) urging the acceptance of the Speaker's advice, and others (Members of the Opposition) pressing the opposite point that the Assembly should be left free to choose the Chairman from outside. In bringing the discussion to a close the Speaker said that his remarks were meant in an advisory strain, that he had not made any ruling on the issue nor had he the intention of doing so; whereupon the Assembly proceeded to consideration of the draft Standing Orders.

The draft Standing Orders were amended and adopted, the amended parts including S.O. (2) (Election of Chairman), which was so amended as to make it possible for the Assembly to elect as its Chairman any person who might not be a member of the Interim Regional Assembly.

On the proposal of Mr. J. E. Appiah (N.L.M.), seconded by Mr. Victor Owusu (N.L.M.), Mr. B. K. Tamakloe (Leader of the Ashanti Bar) was elected as Chairman. The Honourable Krobo Edusei (C.P.P.), then made a statement to the effect that his party would contest in the Supreme Court the legality of the appointment of a Chairman from outside the membership of the Interim Regional Assembly, since under the Standing Orders just then adopted the Chairman had a vote and could introduce business.

The first meeting of the Ashanti Interim Regional Assembly under the chairmanship of Mr. Tamakloe was scheduled to take place on Saturday, 11th May, at the Prempeh Hall, Kumasi. On 9th May Mr. J. Y. Ghann (C.P.P.), on behalf of seven other C.P.P. Members of the Ashanti Interim Regional Assembly, filed a motion at the Kumasi High Court of Justice seeking an injunction or in the alternative the issue of an information in the nature of a *quo warranto* to restrain Mr. B. K. Tamakloe from claiming to be or in any way acting as a member of the Ashanti Interim Regional Assembly or acting as its Chairman.

Sitting at the High Court at Kumasi on 11th May, Smith, J., de-

clared that he could not order the Assembly not to meet as scheduled until submissions in support of the material points in the motion had been made.

The motion was argued on 16th May before Smith, J., who, in delivering his reserved judgment on 30th May, said the point for decision was whether or not the office of Chairman of the Interim Regional Assembly came within the scope of office to which *quo warranto* proceedings were applicable. He cited Tindal, C. J., in Dartey *v.* The Queen: [6]

> This proceeding by information in nature of a quo warranto will lie for usurping any office; whether created by Charter alone or by the Crown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others.

He applied three tests: the source of office, the tenure and the duties. The source was the Statutory Instrument, the Ghana (Constitution) Order in Council, 1957, and he thought the tenure sufficient to satisfy the rule; in which regard he cited Lord Reading in R. *v.* Speyer: [7]

> I have found it difficult to understand why in principle an office held at pleasure should not equally with an office of a permanent character be the subject of this remedy, provided the office be of a public and substantive character.

As regards the duties of the office, he said the Chairman presided over a public constituted body which had the right to advise Ministers of the National Assembly and appoint Committees; and considering also the relevance of the powers, privileges and business of the Chairman in the approved Standing Orders of the Interim Assembly, he was persuaded that those clearly comprised duties of a public nature.

With regard to the point that the Chairman was not the holder of a "public office" within the definition of that office at page 3 of the Order in Council, it seemed clear to him from the case R. *v.* St. Martin Guardians [8] that the office against which the procedure of *quo warranto* was applicable need not be strictly a public office, provided that the office was one the duties of which were of a public nature.

On the question of whether the Interim Assembly could elect a Chairman from outside its own membership or not, he did not consider conclusive the point that it could do so because it was not expressly prohibited in the Order in Council. No authorities had been cited one way or the other, and he could not find any himself. The question had been argued merely on the wording of the Section, in conjunction with other provisions of that Order. He then cited what he described as the ordinary rule for the interpretation of any Statute:

> What the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication.

He said:

Reading Sections 85(1) and (2) together—the Interim Regional Assembly can only consist of a fixed number of persons—and the one and only qualification for membership is membership of the National Assembly. In effect, the Interim Regional Assembly is a Select Committee of Members of the National Assembly and in my view if the Chairman could come from outside it would have to be so expressly stated. The position here cannot be allied —*e.g.*, to that of a sort of society to which any eminent man from outside may be elected Chairman.

The position of the Speaker and the National Assembly has been discussed. But there it is clear that the Speaker may be appointed from within or without the National Assembly (if the former, he vacates his seat) and the constitution is *The Speaker and 104 Members* (Sections 20 and 26 of the Order in Council). There is no provision in Section 85 for a Chairman and a certain number of qualified Members. It is moreover, significant that the same person to preside temporarily at meetings of the Interim Regional Assemblies is the Speaker of the National Assembly pending the election of their own. That, again, is a clear indication for the exclusion of any one else except Members of the National Assembly. There is specific provision for the Speaker and no one else.

I do not think it necessary to go into the right of any chairman to have a casting vote but it seems to me that this will depend on any rules in the Standing Orders.

For these reasons I grant the motion and make an order for injunction as prayed.

On being made aware of the decision of the High Court of Justice at Kumasi, the Speaker, deeming himself still to be Chairman of the Ashanti Interim Regional Assembly, summoned a meeting of that Assembly on 6th June, whereat S.O. 2 (Election of Chairman) was amended to confine the Chairmanship to members of that Assembly, and a new Chairman accordingly was elected from among their own number.

[1] S. 63 (1). [2] S. 64 (1) and (2). [3] S. 85 (1). [4] S. 85 (2).
[5] S. 85 (3) and (4). [6] 12 Cl. and Fin., 520. [7] 1 K.B. at p. 611.
[8] 1851 17 G.B.

XIV. CONSTITUTIONAL DEVELOPMENT IN THE FEDERATION OF MALAYA, 1956 TO AUGUST, 1957

By C. A. Fredericks,
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The Federation of Malaya Constitutional Conference, 1956

The Federation of Malaya Constitutional Conference was held in London from 18th January to 6th February, 1956, following discussions in the Federation the previous August between the Secretary of

State for the Colonies (Mr. A. Lennox-Boyd), Their Highnesses the Rulers of the Malay States and the leaders of the UMNO-MCA-MIC Alliance (the combination of United Malays National Organisation, the Malayan Chinese Association, and the Malayan Indian Congress, which had become the Government of the day after winning 51 out of the 52 elected seats in the Legislative Council elections held in July, 1955). It had been decided then that a Conference should be held in London early in 1956—

> to discuss the future relations which should exist between Her Majesty's Government, Their Highnesses the Rulers and the Government of the Federation, and certain fundamental issues such as defence and internal security, finance and economic development and the future of the Public Services.

The Conference would also discuss the terms of reference, composition and timing of a Commission to review the Federal Constitution, the setting up of which had also been agreed upon in principle at those discussions, and make recommendations thereon to Her Majesty and the Conference of Rulers.

The deliberations of the Conference were conducted in "an atmosphere of the utmost friendliness and cordiality", with every party to it—in the words of the Secretary of State in opening the Conference—"agreed on the direction of the progress it wanted to make: this was to secure the early establishment of a fully self-governing and independent Federation of Malaya within the Commonwealth on the basis of Parliamentary institutions." At its close, an "agreed report" was produced that was "a recognition both of Malaya's new status and of our (*i.e.*, the United Kingdom's and Malaya's) common interests". The Chief Minister, in reply to the Secretary of State's final address, at the close of the Conference said:

> This report heralds the birth of a new nation. Thanks be to God. I am confident that all our people will pronounce this a great success and that future historians will record our achievement in letters of gold.

The recommendations of the Conference were submitted to Her Majesty and the Conference of Rulers for their approval, which was signified during February, 1956. The Report of the Conference was then tabled as Legislative Council Paper No. 6 of 1956 at the meeting of the Council held on 14th March, 1956.[1] At the same meeting, the Legislative Council adopted with acclamation a motion moved by the Chief Minister expressing "its satisfaction with the terms of the agreements reached . . . and declares that it will fully support all steps necessary to give them effect".[2]

It is not necessary to summarise here the detailed recommendations of the Conference relating to defence and internal security, and financial and economic matters, which, although interesting in themselves, do not fall within the compass of this Society. The main recommendations relating to the public service in general and proposed constitutional changes are summarised below.

The Public Service.—The Federation Government should have sole responsibility over the Public Service of the Federation. The Conference accepted the fact that constitutional change would fundamentally vary the conditions under which officers in the Federation's Public Service had been recruited. It set 1st July, 1957, as the point at which " a radical change in the conditions of service of the Public Service " would take place, and when a lump sum compensation scheme for loss of career should be brought into operation. On that date the Public Services Commission, the Judiciary Service Commission and the Police Services Commission would, in accordance with its recommendation, be set up with executive powers. The details of the compensation scheme should be worked out with representatives of the staff associations concerned. Prior to 1st July, 1957, any entitled oversea officer who wished to leave the Federation service should be allowed to do so on accrued pension after reasonable notice and with the permission of the High Commissioner; such permission would only be withheld if proceedings for the officer's dismissal were pending. Officers of Her Majesty's oversea Civil Service and Judiciary remaining in the Federation Service would retain their eligibility to be considered by the Secretary of State for transfer to other territories. The Secretary of State would consult beforehand with the Federation Government on any proposed transfer, while the Federation Government would not unreasonably withhold its consent to such transfer.

As an inducement to entitled expatriate officers to remain in the Federation Service, it was also recommended that every entitled officer be given the opportunity to opt to be retained in the service after 1st July, 1957; any officer so opting would be entitled to have his case considered and, subject to health and efficiency, be informed of the minimum period he might expect to be retained. During that period the Federation Government would undertake not to exercise its right, except on traditional service principles, to retire such officer; such officer would, however, retain unaffected his right to retire after due notice under the compensation scheme.

The Conference regarded an efficient and contented Public Service as an essential foundation of good government at all times, the more so during a period of rapid political change. It considered the observance of the following principles as fundamental for such a service:

(i) recognition of the political impartiality of the Public Service;
(ii) regulation of promotion policy in the Public Service in accordance with publicly recognised professional principles—*i.e.*, on the basis of official qualifications, experience and merit;
(iii) reasonable security of tenure and absolute freedom from arbitrary application of disciplinary provisions.

An independent Public Service Commission with executive powers was the method most generally accepted of ensuring the observance of these principles. It therefore recommended that such a Commission should be established with effect from 1st July, 1957. This Commission would exercise its responsibilities in respect of all branches of the Public Service. There should be separate Service Commissions for the Judiciary Service and the Police Service, to be established at the same time as the Public Service Commission was instituted.

Constitutional Changes.—The Conference recommended a number of amendments to the Federation of Malaya Agreement, 1948.[3] These had the effect—

(i) of requiring the High Commissioner, save in exceptional circumstances, to act in accordance with the advice of the Executive Council;[4]

(ii) of providing for the office of Chief Minister, for the High Commissioner to consult the Chief Minister before appointing the remaining Appointed Members of the Executive Council, and reducing the minimum membership of the Executive Council from 12 to 10;[5]

(iii) of reducing the number of *ex-officio* Members of Legislative Council from three to two and increasing the number of Appointed Members of the Legislative Council from 32 to 33.[6]

The withdrawal of British Advisers in the Malay States was also agreed to. (Under the terms of the State Constitutions, each Ruler was bound to accept the advice of his British Adviser in all matters except in matters pertaining to the Muslim religion and Malay custom.)

Constitutional Commission.—The Conference's recommendations for the composition and terms of reference of the independent Constitutional Commission were first submitted to Her Majesty and the Conference of Rulers for acceptance and subsequently tabled as Legislative Council Paper No. 15 of 1956 at the meeting of the Legislative Council on the 14th March, 1956.[7]

The Constitutional Commission was to be selected in agreement with the Conference of Rulers and Alliance Ministers. The Chairman and one member should be from the United Kingdom, and there should be one member each from Australia, Canada, India and Pakistan. Its terms of reference should be:

To examine the present constitutional arrangements throughout the Federation of Malaya, taking into account the positions and dignities of Her Majesty the Queen and of Their Highnesses the Rulers: and

To make recommendations for a federal form of constitution for the whole country as a single, independent, self-governing unit within the Commonwealth based on Parliamentary democracy with a bi-cameral legislature, which would include provision for:

(i) the establishment of a strong central government with the States and Settlements enjoying a measure of autonomy (the question of the residual legislative power to be examined by, and to be the subject of recommendations by the Commission) and with machinery for consultation between the central Government and the States and Settlements on certain financial matters to be specified in the Constitution;
(ii) the safeguarding of the position and prestige of Their Highnesses as constitutional Rulers of their respective States;
(iii) a constitutional Yang di-Pertuan Besar for the Federation to be chosen from among Their Highnesses the Rulers;
(iv) a common nationality for the whole of the Federation;
(v) the safeguarding of the special position of the Malays and the legitimate interests of other communities.

The London Conference reached two understandings in relation to those terms of reference: first, that nothing in the terms of reference proposed for the Constitutional Commission was to be taken as in any way prejudicing the position of Her Majesty the Queen in relation to the Settlements of Penang and Malacca; secondly, that subsection (iv) of the terms of reference was not to be taken as precluding the Commission from making recommendations which would allow British subjects or subjects of Their Highnesses the Rulers to retain their status as such after they had acquired the proposed common nationality.

It was agreed that in view of the Malayan delegation's desire that full self-government and independence within the Commonwealth should be proclaimed by August, 1957, if possible, a Constitution so providing should be introduced at the earliest possible date consistent with the importance of the task before the Constitutional Commission and that every effort would be made by Her Majesty's Government and the Federation Government to achieve this by the time proposed.

Implementation of Recommendations of the Conference.—The following items of legislation to implement the Constitutional recommendations of the London Conference were introduced on the dates shown:

(i) The Federation of Malaya Agreement (Amendment) Bill, 1956 amending Clauses 31, 32 and 37. Taken through Legislative Council and passed all stages, 14th and 15th March, 1956.[8]
(ii) Proclamation amending Clause 23 of the Federation Agreement. Published on 28th March, 1956.[9]
(iii) The Federation of Malaya Agreement (Amendment No. 2) Bill, 1956—providing for withdrawal of British Advisers and transfer of his powers. Taken through Legislative Council and passed all stages, 11th and 12th July, 1956.[10]

Appointment of Constitutional Commission

The following were appointed Members of the Constitutional Commission:

The Rt. Hon. Lord Reid, a Lord of Appeal in Ordinary (Chairman);
The Rt. Hon. Sir William McKell, G.C.M.G., Q.C., a former Governor-General of Australia;
Mr. B. Malik, a former Chief Justice of the Allahabad High Court;
Mr. Justice Abdul Hamid, of the West Pakistan High Court;
Sir Ivor Jennings, K.B.E., Master of Trinity Hall, Cambridge.

The Commission began its work in June, 1956, and completed its investigations by October the same year. During that period, 118 meetings of the full Commission were held; in addition there were numerous meetings of less formal character by one or more members of the Commission; and 131 memoranda were received. The Commission reassembled in Rome in December to draft its Report, which was completed in February, 1957. The Report was then submitted to Her Majesty and Their Highnesses the Rulers and published on the 21st February, 1957.[11]

The Constitutional Commission stated that in making its recommendations—

> We have had constantly in mind two objectives: first that there must be the fullest opportunity for the growth of a united, free and democratic nation, and secondly that there must be every facility for the development of the resources of the country and the maintenance and improvement of the standard of living of the people. These objectives can only be achieved by the action of the people themselves, our task is to provide the framework most appropriate for their achievement.

The Commission further stated:

> We think it is essential that there should be a strong central Government with a common nationality for the whole of the Federation; moreover, we think it also essential that the States and Settlements should enjoy a measure of autonomy and that Their Highnesses the Rulers should be constitutional Rulers of Their respective States with appropriate provisions safeguarding their position and prestige.

The Report of the Constitutional Commission was on the whole very well received in the Federation. The Commission's omission to provide for the establishment of the Muslim religion as the State religion of the new Federation, and its recommendations on citizenship and on the "special position" of the Malays, however, aroused in that community much dissatisfaction and misgiving.

Summary of recommendations of Constitutional Commission

The Federation and its component States.—Article 1 of the draft Constitution provides for the setting up of the new State as a Federation to be called the Federation of Malaya comprising:

(*a*) the States of Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor and Trengganu;

(*b*) the Settlements—now to be called States—of Malacca and Penang; and
(*c*) such other territories as might in future be included in it.

Parliament may make laws—

(*a*) to admit any new territory to the Federation;
(*b*) to create a new State out of the area of the Federation, or unite two or more States into a new State, or alter the area or boundaries of any State with the consent of the Legislative Assembly of every State affected.

The Head of State.—The Supreme Head of the Federation, to be called the "Yang di-Pertuan Besar", should be elected by the Conference of Rulers from among the Rulers in accordance with procedure agreed to by them. He should be a constitutional Ruler and should hold office for a term of five years. There should be a Deputy Supreme Head of the Federation also to be elected by the Conference of Rulers.[12]

All executive actions of the Federal Government, unless otherwise provided by Parliament, should be expressed as taken in the name of the Supreme Head. Command of the Federation's Armed Forces should vest in the Supreme Head, as would also the prerogative of pardon, respite, remission, suspension or commutation of any sentence for offences against federal law.

In exercising his Constitutional and legal functions the Supreme Head should act in accordance with the advice of the Cabinet, the Prime Minister or the appropriate Minister except in—

(*a*) the appointment of a Prime Minister,
(*b*) the dissolution of Parliament.[13]

The Cabinet.—There should be a Cabinet of Ministers, charged with the general direction and control of the Government of the Federation and presided over by the Prime Minister, to aid and advise the Supreme Head in exercising his functions. The Supreme Head should appoint from among the members of the House of Representatives a Prime Minister who in his judgment was most likely to command the confidence of the majority of the members of that House. It would then be for the Prime Minister to choose the Ministers who should be appointed. Ministers must be Members of Parliament, but the Cabinet should be collectively responsible to the House of Representatives.[14]

Parliament.—The Parliament of the Federation shall consist of the Supreme Head, and the two Houses: the Senate and the House of Representatives.[15]

Senate.—Until otherwise provided by Parliament, the Senate should consist of 33 Members, of whom 22 (2 for each of the 11 States of the Federation) would be elected by the State Legislative

Assemblies, and 11 Members to be nominated by the Supreme Head from persons who in his opinion, had rendered "distinguished public service or have achieved distinction in the professions, Commerce, Industry, Agriculture, Cultural activities or Social service, are representative of racial minorities, or are capable of representing the interests of aborigines". Two members of the Commission—Sir William McKell and Mr. Justice Abdul Hamid—expressed themselves in a dissentient Note as opposed to the constitution of the membership of the Senate by nomination of the Supreme Head and election by State Legislative Assemblies. They considered that the Senate should be constituted by popular elections.[16] Senators should hold office for six years, half being elected or appointed every three years.

House of Representatives.—To consist of 100 members popularly elected from single-member constituencies for a term of five years, subject to earlier dissolution by the Yang di-Pertuan Besar. The first House to be constituted after Merdeka Day should however consist of 104 members (obtained by dividing each of the existing 52 Federal constituencies into two).[17]

Members of Parliament must be: (*a*) Federation citizens, (*b*) not less than thirty years old if a Senator and twenty-five years old if a Representative, and (*c*) resident in the Federation. A person cannot be elected or be an M.P. if—

(*a*) he has been found or declared to be of unsound mind;
(*b*) he is an undischarged insolvent; or
(*c*) he holds any office of profit; or
(*d*) he has been convicted of any offence or corrupt or illegal practice which has been declared by law to be an offence or practice entailing disqualification for membership of either House of Parliament, or has in proceedings relating to an election been found guilty of any such offence or practice, unless such period has elapsed as may be specified by the provisions of that law; or
(*e*) having been nominated as a candidate for election to either House of Parliament, or having acted as election agent to any person so nominated, he has failed to lodge the return of election expenses within the time and in the manner required by law, unless five years have elapsed from the date by which the return ought to have been lodged, or the disqualification has been removed by the Yang di-Pertuan Besar; or
(*f*) he has been convicted of any offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than two years:

Provided that this disqualification shall cease if a period of five years, or such less period as the Yang di-Pertuan Besar may allow, has elapsed since his release; or

(*g*) he has ceased to be a citizen of the Federation or has voluntarily acquired citizenship of, or exercised rights of citizenship in, a foreign country.[18]

Ministers and the Attorney-General should have the right of audience in both Houses of Parliament, but would only be entitled to vote in the House of which they were members.[19]

A Member of Parliament should be member of only one of the two

Houses. If a member of the House of Representatives, he shall not be elected or nominated for election as a member of more than one constituency; if a member of the Senate, he shall not be both an elected and a nominated member, nor shall he be elected or nominated for election as an elected member for more than one State.

On the powers of the two Houses, the Commission held the view[20] that ultimate responsibility should rest with the House of Representatives, with the Senate becoming—

> an influential forum of debate and discussion, and a body which will contribute valuable revision to legislation and which will be able to impose a measure of delay in exceptional cases.

Money Bills should only originate in the House of Representatives, and such Bills if not passed by the Senate within 21 days after being sent to that House should be submitted for the assent of the Yang di-Pertuan Besar, and become law thereafter notwithstanding their not being passed by the Senate.[21] The draft Constitution provides that the annual budget and estimates of revenue and expenditure should be submitted to the House of Representatives,[22] for supply Acts to be passed by that House[23] and for the establishment of a Public Accounts Committee in the House of Representatives.[24] It also provides that no Bill or amendment involving expenditure from the Consolidated Fund may be introduced except by a Minister.[25]

Bills other than money Bills could originate in either House and should be transmitted to the other, and become law on receiving the assent of the Yang di-Pertuan Besar. If the Senate refuses to pass a Bill which has been passed by the Lower House, the Bill should become law if after the lapse of 12 months the House resolves that it should be submitted for the assent of the Yang di-Pertuan Besar. The House should not, however, be able to overrule the Senate on a Bill amending the Constitution.[26]

It should be within the power of Parliament to enact what should be the privileges of the two Houses. The Commission, however, considered any person accused of breach of privileges should be tried and punished by the Supreme Court and not by either House concerned.[27]

Elections.—The delimitation of constituencies and the preparation and conduct of elections—both Federal and State—should be entrusted to a permanent independent Election Commission of three members to be appointed by the Yang di-Pertuan Besar. To safeguard the political independence of the Commission, members of it should be removable from office in the same manner as provided for a Judge of the Supreme Court.[28] The Commission should also be the prescribed authority for dealing with applications for citizenship until Parliament decided otherwise.

The Election Commission, in delimiting Federal Constituencies, should first allocate from the total of 100 seats a quota for each State, and then delimit in each State that number of constituencies. Each

constituency should contain a nearly equal number of electors, provided that the Commission should also have regard to—

(*a*) the distribution of the population in the State;
(*b*) the sparsity or density of that population in the several parts of the State;
(*c*) the means of communication; and
(*d*) the distribution of the different communities.

The first redistribution of constituencies should take place after the election of the first Parliament and before the election of the second.

For the first election after Merdeka Day there should be 104 Federal constituencies divided among the States as follows:[29]

Johore	16	Penang	8
Kedah	12	Perak	20
Kelantan	10	Perlis	2
Malacca	4	Selangor	14
Negri Sembilan ...	6	Trengganu ...	6
Pahang	6		

This first election should not be held until 1st January, 1959, in order that new citizens should have the opportunity under the new provisions to be registered and new electoral rolls be prepared. The same electoral rolls should be used for both Federal and State elections.

The existing Legislative Council as constituted before Merdeka Day should remain in being until 1st January, 1959.

To be an elector, a person must be:

(*a*) a citizen;
(*b*) not less than 21 years of age;
(*c*) of sound mind;
(*d*) resident in the constituency for a period of not less than six months immediately preceding the qualifying date; and
(*e*) free from any disqualification imposed under any law relating to corrupt or illegal practices at elections.

Citizenship.—Having defined the recommended qualifications for Malayan citizenship and naturalisation into that citizenship, the Commission further recommended that in accordance with the general law of the Commonwealth, citizens of the Federation and of all other Commonwealth citizens should be declared to have the common status of Commonwealth citizens.[30] The law of the Federation should also be brought into conformity with the existing law of the Commonwealth whereby dual citizenship within the Commonwealth is recognised.

Fundamental Rights.—In para. 161 of its Report, the Commission said:

A Federal constitution defines and guarantees the rights of the Federation and the States; it is usual and in our opinion right that it should also define and guarantee certain fundamental individual rights which are generally regarded as essential conditions for a free and democratic way of life. The rights which we recommend should be defined and guaranteed are all firmly established now throughout Malaya and it may seem unnecessary to give them special protection in the Constitution. But we have found in certain quarters vague apprehensions about the future. We believe such apprehensions to be unfounded, but there can be no objection to guaranteeing these rights subject to limited exceptions in conditions of emergency and we recommend that this should be done. The guarantee afforded by the Constitution is the supremacy of the law and the power and duty of the Courts to enforce these rights and to annul any attempt to subvert any of them whether by legislative or administrative action or otherwise.

The Commission recommended that there should be freedom from arrest and detention without legal authority,[31] freedom from slavery or enforced labour (compulsory service for national purposes excepted);[32] there should be provisions against banishment and restriction of freedom of movement of citizens.[33] Freedom of speech and expression should be guaranteed to all citizens subject to "any reasonable restriction" in the interests of security, public order or morality, or in relation to incitement, defamation or contempt of court.[34] There should be freedom of religion including the right to profess and propagate one's religion subject to requirements of public order, health and morality.[35]

All persons shall be equal before the law and entitled to equal protection of the law. There should be guarantees against discrimination on grounds of religion, race, descent or place of birth in making Government appointments or granting entry to educational institutions or granting financial aid to pupils or students, or with regard to the right to carry on any trade, business, profession or occupation. No person should be deprived of his property save by law providing for adequate compensation.[36]

With regard to provision in the Constitution to "safeguard the special position of the Malays and the legitimate interests of other communities", the Commission states in para. 163 of their Report on the "Special position of the Malays" that they found difficulty in reconciling that term of reference with the one requiring them to provide for a Common Nationality for the whole of the Federation and to ensure that the Constitution should guarantee a democratic form of Government, as under that form of government it was inherent that all Federation citizens irrespective of race, creed or culture should enjoy certain fundamental rights including equality before the law.[37]

It nevertheless recommended that certain preferences given to Malays (*e.g.*, relating to land reservation) in the original treaties with the Malay States should be continued, but not increased,[38] and that some of these preferences should be reviewed after fifteen years.

The Judiciary.—Article 114 of the draft Constitution sets up a

Supreme Court consisting of a Chief Justice, who shall be appointed by the Yang di-Pertuan Besar, and not more than 15 Judges to be appointed by him after consultation with the Chief Justice. The Supreme Court existing immediately before Merdeka shall be deemed to be the Supreme Court established by the new Constitution, and the Chief Justice and all the Judges thereof holding office before Merdeka Day shall continue in office. In addition to its ordinary functions, the Supreme Court should have the functions of interpreting the Constitution and protecting State rights and fundamental liberties.[39]

For a person to be appointed a judge of the Supreme Court, he must for a period of at least ten years—

(*a*) have been an advocate of the Supreme Court; or
(*b*) have been in the judicial service of the Federation; or
(*c*) have been such an advocate and have been in the said judicial service.[40]

The age of retirement of a Supreme Court Judge should be 65 years, and he could be removed from office only—

by an order of the Yang di-Pertuan Besar made in pursuance of an address passed by a majority of two-thirds of each House of Parliament; and before any such motion is moved there must be proved misconduct or infirmity of mind or body.[41]

Provided the procedural difficulties could be overcome, the practice of appeals to the Privy Council of the United Kingdom should be preserved.[42]

The Public Services of the Federation.—The Commission accepted the recommendations of the Federation of Malaya Constitutional Conference held in January and February, 1956, that three independent Service Commissions with executive authority—a Public Services Commission, a Judicial Service Commission and a Police Service Commission—should be established, and made provision accordingly in their draft Constitution.[43] Members of these Commissions other than *ex-officio* members should hold office for a term of five years and should only be removed from office in the manner provided for the removal of a Judge of the Supreme Court.

The Service Commissions should be responsible for appointments, promotions and discipline in the Public Services, subject to the Government's right to require reconsideration of any recommendations for higher appointments in the Public Services. The responsibility of the Public Services Commission should extend to the Public Services of the States also.

The Constitutional Commission also proposed that a National Pension Fund should be created, from which the pensions of pensionable officers in Federal and State employment would be met. The Fund would be managed by the Federal Treasury and would derive its finances from annual contributions which both the Federal and

the State Governments would make in respect of all pensionable officers in their employment. At present, the Federation Government was responsible for payment of all pensions, and a State could not make any addition to its pensionable staff without the sanction of the Federation Government. The creation of this Fund would restore a "measure of autonomy" to the States in respect of staffing matters.

The States.—The Commission was bound by its terms of reference to include in its recommendations provision for the safeguarding of "the position and prestige of Their Highnesses the Rulers as constitutional Rulers of their respective States". The Commission construed the term "constitutional Ruler" as—

> a Ruler with limited powers . . . bound to accept and act on the advice of the Mentri Besar (*i.e.*, Prime Minister of a State) or Executive Council, and that the Mentri Besar or Executive Council should not hold office at the pleasure of the Ruler or be ultimately responsible to him but should be responsible to a parliamentary assembly and should cease to hold office on ceasing to have the confidence of that assembly.

On this view, from its examination of the Constitutions of the States, the Commission considered that "Their Highnesses are not constitutional Rulers at present". It therefore felt bound to recommend amendments to the State Constitutions which would make the Rulers constitutional rulers in the above sense.

The amendments recommended place the Ruler of the State in much the same position as that of the Yang di-Pertuan Besar in the Federation.

The State Legislature should consist of the Ruler and one House to be called the Legislative Assembly, the members of which would, under the permanent provisions of the constitution, be popularly elected. Subject to earlier dissolution by the Ruler, the duration of the Legislative Assembly should be four years.

Executive authority in the State would be exercised by an Executive Council, the members of which should be appointed by the Ruler on the advice of the Mentri Besar from the members of the State Legislative Assembly, to which the Executive Council should be collectively responsible. The Mentri Besar should ultimately be an elected member of the Legislative Assembly, and his position and powers in the State would be analogous to those of the Prime Minister in the Federal Government.[41]

A constitutional structure for the Settlements of Malacca and Penang, which should become States in the New Federation, similar to that for the other States after their Constitution had been amended in the manner suggested by the Commission was recommended. The constitutional Head in each of these new States should be a Governor to be appointed for a term of four years by the Yang di-Pertuan Besar, but after appointment the Governor should not be responsible to the Yang di-Pertuan Besar or to the Federal Government but only

to his State. His appointment would only be terminable on a resolution adopted by a two-thirds majority of the State Legislative Assembly.

Division of Legislative and Executive Powers.—The Commission considered the existing division of powers provided for in the Federation Agreement, 1948, between the Federation and the States, whereby legislative power in many matters resided with the Federation and executive responsibility with the States, would not be suitable in the future. In a democratic Malaya of the future envisaged by the Commission, the Government of a State would be subject to the control of an elected State Legislative Assembly, which might differ in policy and outlook from the party in power in the Federation. Continuance of the present division of powers in such circumstances would give rise to friction and might have grave consequences to national unity. Accordingly, the Commission recommended that legislative power and executive responsibility should in future be concomitant: the legislative power of the Federation should extend to all the matters scheduled in a Federal Legislative List, together with the executive responsibility necessary for determining policy and controlling administration; similarly for a State with regard to the matters set out in a State Legislative List. In regard to the matters set out in a Concurrent Legislative List, executive responsibility would be in accordance with Federal or State law.[45]

The Commission also recommended, however, that the Federation should be empowered to pass an Act on any State subject for the purpose of ensuring uniformity, though, in order to preserve State supremacy in State matters, such Act should not come into force in any State until it had been adopted with or without modification by an Enactment of the State Legislative Assembly. In so recommending, the Commission had in mind legislation with regard to land and kindred matters—particularly to a National Land Code—and on local government.[46]

In addition, as a measure to promote and encourage close cooperation between the States and the Federation in the national interest, to ensure full use of technical resources and to save unnecessary duplication of staff, the Commission recommended that delegation of executive responsibilities should be freely resorted to between the Federation and the States, subject to consent by the Government to whom the delegation was to be made. Where an Act of Parliament requires a State to undertake executive responsibility for a specified purpose, the State would be entitled to reimbursement of the costs incurred by it.[47]

As for residual legislative power, the Commission recommended that this should continue to be retained by the States for the following reason:

> The situation of the residual powers makes no difference to the construction of any of the specific powers in the Federal List: for example the defence

power is just as wide under our recommendation as it would be if the residual powers were transferred to the Federation. Moreover it is unlikely that the residual power will ever come into operation because the Legislative Lists read in the light of the clauses in Article 68, appear to us to cover every foreseeable matter on which there might be legislation. The only real effect of leaving the residual power with the States is that if some unforeseen matter arises which is so peculiar that it cannot be brought within any of the items mentioned in any of the Legislative Lists, then that matter is within the State powers.[48]

The main recommendations of the Commission in regard to the distribution of subjects among the three Legislative Lists are touched upon briefly below.

Land.—This should remain a State subject. It would be neither practicable nor desirable to transfer the general administration of land to the Federation. Moreover, deprived of their right to deal with their land, States would have no real autonomy. This should, however, be one of the State subjects upon which the Federal Parliament would be entitled to pass Acts with a view to bringing about uniformity in land administration and procedure.[49] The Federal Government should have power to acquire land compulsorily for federal purposes, but such land as is no longer required should revert to the State upon payment by the State of either its market value or the actual amount paid by the Federation in acquiring it plus the value of improvements. If the State does not pay this sum, the Federation should be entitled to sell the land. Any dispute between the Federation and a State as to valuations should be referred to a Lands Tribunal, on which both Federation and the State would have representatives.

Finance.—The Federation should have responsibility for currency, legal tender and coinage, national savings and savings banks, national debt, borrowing on the security of the Federal Consolidated Fund, taxes, banking and foreign exchange, and capital issues.

Agriculture, Soil Conservation, Forestry and Mining.—These should remain State subjects, but the Federation should continue to be responsible for research, technical assistance and advisory services, as at present.[50]

Control of Inland Waters, Riparian Rights, Water Supplies and Storage.—Subject to special provisions where the interests of two or more States or the interests of the Municipality of Kuala Lumpur are concerned, these should be State subjects. Water Power should, however, be a Federal responsibility.[51]

Irrigation and Drainage.—The Commission recommended placing this in the Concurrent List. This would leave it open to the Federal Government to assume complete financial and technical responsibility for drainage and irrigation schemes or continue the present system whereby it makes special grants to the

States, which then carry out the schemes with technical assistance and advice from the Federation.[52]

Tin Mining.—The existing system should continue under which the Federation is responsible for the control of mining operations and States are responsible for the granting of prospecting permits and licences and the granting of leases.

National Development Schemes.—The Federation should be entitled to assume direct responsibility for national schemes of development in agriculture, mining, forestry, irrigation and drainage, soil conservation and other purposes, subject to two limitations:

(i) Before any scheme involving interference with State rights can be initiated by the Federation, it should be examined and reported upon by an expert body, followed by consultation between the Federation and the States in the National Finance Council.
(ii) The scheme should be confined to a specified area or specified areas.

Should the bringing into operation of the scheme diminish State revenue, the diminution should be made good by the Federation by additional annual grant.

External Affairs and Defence.—Should be Federal subjects. Federal powers to deal with these matters should be comprehensive and would enable the Federation "to take action on all subjects, including subjects in the State List, to such extent as might be necessary for these purposes. In particular, the Federation should be entitled to take all action necessary to implement future treaties and existing treaties which continue in force and to provide for visiting forces."[53]

Police and Internal Security, Extradition and Fugitive Offenders, Aliens and Immigration.—These should be Federal subjects.

Civil and Criminal Law and Procedure should continue to be Federal subjects.

The Federation should also continue to have responsibility for matters of Trade, Commerce and Industry, Shipping and Navigation and Fisheries. Educational and Medical Services should become Federal subjects.

Finance.—The Commission recommended that States should continue to be entitled to collect and retain the proceeds of certain taxes, duties and fees of a local character, together with revenue from land, but that there should in future be no further extension of the State powers of taxation. In addition, the States should have the following three sources of general revenue:

(1) Grants-in-aid of general revenue from the Federation;

(2) Assignment of amounts derived from federal taxation (with particular reference to a share of the proceeds of the tin export duty); and
(3) Licence and other fees of a local character levied by the States under federal legislation.

The basis for the computation of the grants-in-aid of general revenue should be decided by consultation between the States and the Federation in the National Finance Council, which should be set up as the machinery for consultation between the Federation and the State Governments on financial matters specified in the Constitution.[54]

Financial Procedure.—The Commission also proposed that the State Constitutions should include provisions for financial procedure not differing in essentials from those applying to the Federal Government itself. The Commission's remarks are reproduced below:

> The principle that there shall be no taxation except under authority of law is fundamental. The proceeds of taxes and all other revenues (with minor exceptions) are to be paid into a national fund called the "Consolidated Fund" (Article 89) out of which moneys cannot be paid except under the authority of law. The law gives that authority in two ways, by charging on the Consolidated Fund (Article 90) and by votes passed by Parliament (Articles 92, 93 and 94). Moneys are charged on the Consolidated Fund when it is of constitutional importance that they ought not to be made the subject of an annual vote. The greater part of the annual expenditure is, however, varied from year to year and included in annual votes. The Minister of Finance would include the whole of the expenditure in his Budget, but only the votes would be included in the Supply Bill. This Bill, when enacted, authorises the issue of the total of the votes from the Consolidated Fund and at the same time allocates or "appropriates" the expenditure according to the votes. The votes are thus binding in the departments and no vote can be exceeded except by express legislative authority, which would have to be given by a Supplementary Supply Bill (Article 93). Within the votes (*i.e.*, among the sub-heads of the Estimates) there can be variations without express legislative authority, though we consider that there should be no such transfers at all in the States except by Supplementary Estimates. Matters of this kind would, however, be dealt with by General Financial Orders and accordingly they are not included in the draft Constitution. The responsibility for seeing that expenditure is legally justified is placed in the first instance on the department concerned and in the second place on the Finance Department. There are, however, two further checks, exercised by the Auditor-General (Article 97), whose functions would continue to extend to the States as well as to the Federation, and by the Public Accounts Committee of the appropriate legislature (Article 100). We have not included a power to surcharge a person responsible for unlawful or excessive expenditure, but such a power could be conferred by legislation.[55]

Amendment of the Constitution.—The Commission, in para. 80 of its Report, remarked:

> It is important that the method of amending the Constitution should be neither so difficult as to produce frustration nor so easy as to weaken seriously the safeguards which the Constitution provides. . . . Our recommendation (Article 150) is that, except where the Constitution itself provides that any of its provisions can be altered by ordinary legislation, amendment of the Con-

stitution should only be competent by an Act of Parliament passed in each House by a majority of two-thirds of the members present and voting being also a majority of the total number of members of the House.

Action on Report of the Federation of Malaya Constitutional Commission

A Working Party, comprising the High Commissioner (as Chairman), four representatives of the Rulers, four representatives of the Alliance Government, the Chief Secretary and the Attorney-General, was set up in the Federation to examine the Report and make recommendations. The Working Party commenced work on 22nd February, 1957, and finished by 27th April, 1957. It then reported to the Conference of Rulers on 14th March, 10th April and 7th May, and to the Federal Executive Council on 3rd and 6th May, 1957.

Then a Federation delegation, consisting of the High Commissioner, the Chief Minister, the Attorney-General and representatives of the Rulers and the Alliance Government went to London to confer with Her Majesty's Government, which had also been studying the Report. The discussions lasted from 13th May to 21st May, and ended in agreement between all parties on all points of principle. The recommendations, as agreement on them was reached at the discussions, were forwarded to the Office of the United Kingdom Parliamentary Counsel (which in the meanwhile had been scrutinising the draft Constitution to remove ambiguities and inconsistencies and, where necessary, improving its form) for the drafting and incorporation of the necessary amendments into the draft Constitution.

The Federation of Malaya Constitutional Proposals, with the draft Constitutions of the Federation and of new States of Malacca and Penang as appendices, were then published and tabled as a Council Paper[56] in the Legislative Council at its meeting on 10th July, 1957,[57] after Her Majesty's Government and Conference of Rulers had indicated their approval. The Constitutional Proposals were approved by the Legislative Council after a debate which lasted nearly two days and during which 51 members spoke.[58]

The Constitution of the Federation of Malaya, as agreed upon by Her Majesty's Government, the Rulers and the Alliance Government and approved by the Legislative Council, does not differ very substantially from the Constitutions recommended by the Constitutional Commission.

Principal Modifications to recommendations of the Constitutional Commission.—(A) *Citizenship:* A number of detailed modifications were recommended to the proposals, mentioned but not described above (see p. 96), concerning citizenship.

(B) *The Head of State:* The title of the Supreme Head of the Federation to be "Yang di-Pertuan Agong" and that of his Consort "Raja Permaisuri Agong".

(C) *The Conference of Rulers:* The Conference of Rulers, apart

from meeting to elect the Head of State and Deputy Head of State, to have the following additional functions:

(*a*) to consent or withhold consent to laws which

(i) alter the boundaries of a State or affect the privileges, position, honours and dignities of the Rulers and the Governors; or

(ii) affect the special position of the Malays or the legitimate interests of other communities.

(*b*) to be consulted on—

(i) the appointment of the Chief Justice and Judges of the Supreme Court, the Auditor-General, members of the Election Commission and Public Services Commissions;

(ii) any change in policy affecting the special position of the Malays or the legitimate interests of the other communities which it is proposed to introduce by administrative action;

(iii) the acts, observances or ceremonies appertaining to the Muslim religion.

(*c*) to deliberate on matters of national policy and any other matter it thought fit.

(D) *Pardons:* The Yang di-Pertuan Agong will have power to grant pardons, reprieves and respites in respect of all offences which have been tried by court martial only, and the Ruler or Governor of a State will have power to grant pardons, reprieves and respites in respect of other offences committed in his State.

(E) *Parliament:* The membership of the Senate is increased to 38 members: 22 State Members and 16 Nominated.

(F) *Redistribution of Constituencies:* The Election Commission must normally undertake redistribution of constituencies at intervals of not less than eight nor more than ten years, but is authorised to do so in an interval of less than eight years from the previous redistribution on the admission of a new State or after a change in State boundaries.

(G) *Creation of new State or Union of two or more States by Act of Parliament:* Changes of this nature to be by way of constitutional amendment and not by Act of Parliament.

(H) *Legislative Lists:* On the State subjects of land tenure, relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases other than mining leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land, and local government, Parliament will have power to make laws only for the purpose of ensuring uniformity of law and policy but where such law confers executive authority on the Federation, it

will become operative in a State only if approved by resolution of the State Legislative Assembly.

(I) *National Land Council:* A new provision is included establishing a National Land Council " to formulate from time to time . . . a national policy for the promotion and control of the utilisation of land ".

(J) *Judiciary:* The Yang di-Pertuan Agong, in appointing the Chief Justice, may act in his discretion after consulting the Conference of Rulers and considering the advice of the Prime Minister. He shall act, in appointing the other Judges of the Supreme Court, on the recommendations of the Judicial and Legal Service Commission after consulting the Conference of Rulers.

Citizenship of the Federation is included as a qualification for appointment as a Judge of the Supreme Court, but Judges who were appointed before Merdeka Day need not be citizens.

A different procedure for the removal from office of Judges of the Supreme Court is provided. The Yang di-Pertuan Agong is to act only on the recommendation of a tribunal to be appointed only at the request of the Prime Minister, or of the Chief Justice after consultation with the Prime Minister.

The Constitution provides that the Yang di-Pertuan Agong may make arrangements with Her Majesty for the reference to the Judicial Committee of Her Majesty's Privy Council of appeals from the Federation's Supreme Court.

(K) *Finance:* States will be entitled to receive the following grants and other sources of revenue as of right:

(i) a capitation grant at the rate of $15 per person for the first 50,000 of population, $10 per person for the next 200,000, and $4 per person for the remainder;
(ii) a State road grant;
(iii) the proceeds from certain taxes, fees and other sources of specified revenue set out in a Schedule to the Constitution.

In addition, Parliament may by law assign to a State not less than 10 per cent. of the export duty on tin produced in the State.

A State reserve fund is established for the benefit of States finding difficulty in balancing their budgets without assistance.

(L) *Public Services:* The following new provisions were inserted:

(i) for establishing an Armed Forces Council;
(ii) for establishing a separate Railway Service Commission;
(iii) providing for protection of pension rights and for impartial treatment of all persons in Government service.

The Commission's recommendation on the establishment of a National Pension Fund was omitted.

(M) *The Attorney-General:* The recommendation that this should not be a political office was accepted. The Attorney-General may

only be removed from office on like grounds and in like manner as a Judge of the Supreme Court.

(N) *Fundamental Rights:* The Article of the Constitution proposed by the Commission on the subject of the enforcement of the rule of law was not found satisfactory and omitted on the ground that it is impracticable to provide within the limits of the Constitution for all possible contingencies and that sufficient remedies can best be provided by ordinary law.

The responsibility of safeguarding the special position of the Malays and the legitimate interests of other communities is placed on the Yang di-Pertuan Agong for the Federation and the Ruler or Governor for a State.

The Commission's recommendation that the question of Malay preferences be reviewed after 15 years was omitted as it was not considered necessary to have such a provision in the Constitution.

Islam is declared the religion of the Federation, but this will in no way affect the present position of the Federation as a secular State and the right of every person to profess and practise his own religion, and to propagate it subject to any restrictions imposed by State law relating to the propagating of any religious doctrine or belief among persons professing the Muslim religion.

(O) *Constitutional Amendment:* For an amendment of the Federal Constitution, the votes of not less than two-thirds of the total membership of each House of Parliament is required, and for an amendment to a State Constitution a similar proportion of the State Legislative Assembly.

Conclusion

The Conference of Rulers at its meeting on 3rd August, 1957, elected His Highness Tuanku Abdul Rahman ibni Al-marhum Tuanku Muhammad, Yang di-Pertuan Besar of the State of Negri Sembilan, as Yang di-Pertuan Agong of the independent Federation of Malaya. He was formally installed as Yang di-Pertuan Agong on 31st August.

The Federation of Malaya Agreement, 1957,[58] was signed on 5th August by the Rulers and by the High Commissioner on behalf of Her Majesty the Queen. By this Agreement, the power and jurisdiction of Her Majesty and of the Parliament of the United Kingdom in respect of the Settlements of Malacca and Penang and of the Malay States was brought to an end and the new Constitutions for the independent Persekutuan Tanah Melayu (Federation of Malaya) and for the government of Malacca and Penang were formally agreed to. Approval by the Legislative Council of the new Constitutions was given at its meeting on 15th August, with the passage after a short debate of the Federal Constitution Bill, 1957.[60]

On the morning of 31st August, in a short historic ceremony in the newly completed Merdeka Stadium in Kuala Lumpur, before a vast

gathering which included representatives of forty-five countries which had sent delegates at the invitation of the Federation Government to join in the Independence Celebrations, Her Majesty's Representative, H.R.H. The Duke of Gloucester, read a message of good wishes and welcome into the Commonwealth from Her Majesty and handed over the Constitutional Instruments embodying the independence of the Federation of Malaya to the new Prime Minister of the Federation, Tunku Abdul Rahman Putra.

The Prime Minister then read the following Proclamation of Independence:

IN THE NAME OF GOD, THE COMPASSIONATE, THE MERCIFUL, PRAISE BE TO GOD, THE LORD OF THE UNIVERSE AND MAY THE BLESSINGS AND PEACE OF GOD BE UPON HIS MESSENGERS.

WHEREAS the time has now arrived when the people of the Persekutuan Tanah Melayu will assume the status of a free independent and sovereign nation among the nations of the world,

AND WHEREAS by an agreement styled the Federation of Malaya Agreement, 1957, between Her Majesty the Queen and Their Highnesses the Rulers of the Malay States it was agreed that the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the former Settlements of Malacca and Penang should as from the 31st day of August, 1957, be formed into a new Federation of States by the name of Persekutuan Tanah Melayu,

AND WHEREAS it was further agreed between the parties to the said agreement that the Settlements of Malacca and Penang aforesaid should as from the said date cease to form part of Her Majesty's dominions and that Her Majesty should cease to exercise any sovereignty over thm,

AND WHEREAS it was further agreed by the parties aforesaid that the Federation of Malaya Agreement, 1948, and all other agreements subsisting between Her Majesty the Queen and Their Highnesses the Rulers or any one of them immediately before the said date should be revoked as from that date and that all powers and jurisdiction of Her Majesty or of the Parliament of the United Kingdom in or in respect of the Settlements aforesaid or the Malay States or the Fedration as a whole should come to an end,

AND WHEREAS effect has been given to the Federation of Malaya Agreement, 1957, by Her Majesty the Queen, Their Highnesses the Rulers, the Parliament of the United Kingdom and the Legislatures of the Federation and of the Malay States,

AND WHEREAS a constitution for the Government of the Persekutuan Tanah Melayu has been established as the supreme law thereof,

AND WHEREAS by the Federal Constitution aforesaid provision is made to safeguard the rights and prerogatives of Their Highnesses the Rulers and the fundamental rights and liberties of the people and to provide for the peaceful and orderly advancement of the Persekutuan Tanah Melayu as a constitutional monarchy based on parliamentary democracy,

AND WHEREAS the Federal Constitution aforesaid having been approved by an Ordinance of the Federal Legislatures, by the Enactments of the Malay States and by resolutions of the Legislatures of Malacca and Penang has come into force on the 31st day of August, 1947, aforesaid,

NOW IN THE NAME OF GOD THE COMPASSIONATE, THE MERCIFUL, I, TUNKU ABDUL RAHMAN PUTRA IBNI AI-MARHUM SULTAN ABDUL HAMID HALIM SHAH, PRIME MINISTER OF THE PERSEKUTUAN TANAH MELAYU, with the concurrence and approval of Their Highnesses the Rulers of the Malay States do hereby proclaim and declare on

behalf of the people of the Persekutuan Tanah Melayu that as from the thirty-first day of August, nineteen hundred and fifty-seven, the Persekutuan Tanah Melayu comprising the States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelatan, Trengganu, Perak, Malacca and Penang is and with God's blessing shall be for ever a sovereign democratic and independent State founded upon the principles of liberty and justice and ever seeking the welfare and happiness of its people and the maintenance of a just peace among all nations.

[1] L.C. *Hans.*, 14.3.56, c. 886. [2] *Ibid.*, c. 887. [3] *See* THE TABLE, Vol. XVII, p. 262. [4] Agreement, cl. 32. [5] *Ibid.*, cl. 23. [6] *Ibid.*, cl. 36, 37 and 39. [7] L.C. *Hans.*, 14.3.56, c. 887. [8] Ordinance No. 1 of 1956; *see* THE TABLE, Vol. XXV, p. 131, and L.C. *Hans.*, 14.3.56, cc. 1033-4. [9] L.N. 106 in Gazette, Vol. IX, Legislative Supplement No. 14 dated 2.4.56. [10] Ordinance No. 29 of 1956; *see* THE TABLE, Vol. XXV, p. 131, and L.C. *Hans.*, 12.7.56, cc. 1465-71. [11] Council Paper No. 12 of 1957. [12] Arts. 27 and 28. [13] Arts. 32 and 33. [14] Art. 36. [15] Art. 38. [16] *Ibid.* [17] Art. 40. [18] Art. 41. [19] Art. 50. [20] Report, para. 64. [21] Art. 59. [22] Art. 91. [23] Art. 92. [24] Art. 100. [25] Art. 59. [26] Art. 60 (3). [27] Art. 57. [28] Art. 106. [29] Report, para. 75 [30] *Ibid.*, para. 47. [31] Art. 5. [32] Art. 6. [33] Art. 9. [34] Art. 10. [35] Art. 11. [36] Art. 13. [37] Report, para. 163. [38] *Ibid.*, para. 165. [39] Art. 119. [40] Art. 115. [41] Report, para. 125. [42] *Ibid.*, para. 126. [43] *Ibid.*, paras. 153 and 154; Part X of Constitution. [44] *Ibid.*, paras. 179 and 180. [45] *Ibid.*, para. 82. [46] *Ibid.*, para. 84. [47] *Ibid.*, para. 83. [48] *Ibid.*, para. 121. [49] *Ibid.*, para. 88. [50] *Ibid.*, paras. 97-101. [51] *Ibid.*, para. 102. [52] *Ibid.*, para. 103. [53] *Ibid.*, para. 113. [54] *Ibid.*, paras. 129-42. [55] *Ibid.*, para. 152. [56] No. 41 of 1957. [57] L.C. *Hans.*, 10.7.57, c. 2817. [58] *Ibid.*, cc. 2837-2928, 2939-3030. [59] Gazette Notification (New Series) No. 885, dated 11.12.57. [60] L.C. *Hans.*, 15.8.57, cc. 3135-79; Ordinance No. 55 of 1957.

XV. APPLICATIONS OF PRIVILEGE, 1957

At Westminster

Reflections on conduct of Members in regard to petrol rationing.—In addition to the cases which were reported in Volume XXV of THE TABLE,[1] three further complaints arising out of the application of petrol rationing were raised on 22nd January. The first, which was raised by Mr. George Wigg (Dudley) related to a statement made during the course of an unscripted programme of the British Broadcasting Corporation by Mrs. Mary Stocks on 21st December, 1956, as follows:

> The only people who are really well off under the rationing scheme are M.P.'s and potential M.P.'s who are nursing constituencies and who apparently have as much petrol as they want to drive round their constituency.

The second complaint, raised by Mr. Lagden (Hornchurch) concerned the following paragraphs which had appeared in the *Romford Recorder* of 4th January:

M.P.s TOO KIND TO THEMSELVES

In common with M.P.s and other prospective Parliamentary candidates, I have just been allocated a supplementary petrol ration to cover 750 miles per month—this in addition to my 200 miles basic for private motoring.

Such an allocation is outrageously high—particularly when one considers how shabbily industry and people like commercial travellers are being treated.

I have heard it said that the best club to belong to is the House of Commons. The privileges granted to its members certainly seem to be on the increase even if democracy is suffering as a result.

Moreover, it is my opinion that, in the light of their sad record over the past few years, which has more than anything else been responsible for the recent crisis and petrol rationing, the very last persons to have supplementary rations should be Members of Parliament.—DONALD PATERSON.

The third complaint, brought by Mr. Ledger (Romford) referred to a statement reported in another issue of the same newspaper (18th January), as follows:

PATERSON CALLS MEETING ON POLITICIANS' PETROL

Comment on this question, he told the *Recorder*, has been "effectively muzzled" by the recent action of the House of Commons Committee of Privileges against the editors of two national newspapers.

The first two complaints were referred without debate to the Committee of Privileges; but several Members, before the third complaint was so referred, expressed the view that the facts concerning the administration of petrol rationing were already well known, and that the House was in danger of making itself ridiculous by pursuing the matter further. Contrary views were also adduced, and one Member (Mr. Leavey) (Heywood and Royton) went so far as to aver that as Mr. Speaker had ruled that the matter was *prima facie* one of privilege, it was improper to argue that it should not be referred to the Committee; to this, however, Mr. Speaker replied:

I can tell the hon. Member straight away that there is nothing wrong, or unconstitutional, or contrary to the practice of this House in the House refusing a Motion that a matter be referred to the Committee of Privileges. The duty of the Chair is to see that the minimum requirements which constitute a *prima facie* case of breach of Privilege are present, and he merely says that they are in order to give the Motion priority over the Orders of the Day. That does not imply either a Ruling on the part of the Chair that a breach of Privilege has been committed or that the House ought to send the matter to the Committee of Privileges. It is entirely a matter for the House to debate. For example, there are many technical breaches of Privilege, such as giving reports of our debates in the Press, which the House has been content to ignore for a large number of years but which, if they were raised, would no doubt still be considered as technical breaches of Privilege. There may be many other such cases.

The duty of the Speaker is to safeguard the House from entirely frivolous invocations of the law of Privilege. In this case, in view of what has happened in an earlier case, I took the view—as the House took upon the earlier occasion—that it was my duty so to rule. But it is by no means incumbent upon hon. Members to vote either for or against the Motion.

The motion was eventually agreed to.[2]

The Fourth Report of the Committee, dealing with these complaints, was laid on the Table on 5th February.[3] With regard to the broadcast statement complained of by Mr. Wigg, the Committee said:

> Your Committee are of opinion that this statement does not constitute a contempt of the House. Criticism of a petrol rationing scheme, whether or not well founded, is very different from a reflection upon all Members of Parliament alleging that they have been guilty of contemptible conduct, intended to hold them up to public obloquy and calculated to diminish the respect due to the House and so to lessen its authority.[4]

On the statement made in the *Romford Recorder* on 4th January, the Committee had the following remarks to make:

> The statement as a whole appears to Your Committee to be a criticism of the petrol rationing scheme so far as it relates to Members of Parliament and prospective candidates. The sentence " The privileges granted to its members certainly seem to be on the increase even if democracy is suffering as a result ", though untrue, is from its context related to the petrol rationing scheme.
>
> Your Committee are of opinion that this statement made by the said Donald Paterson and published by the *Romford Recorder* does not constitute a contempt of the House. It is not in their view calculated to diminish the respect due to the House or to lessen its authority.
>
> The heading to the statement for which the Editor was responsible does not in Your Committee's view constitute a fair indication of the content of the statement. It clearly suggests that Members of Parliament have improperly favoured themselves in relation to petrol rationing and so amounts to a reflection upon and a contempt of the House: but not, in the opinion of Your Committee, a contempt of such a nature as to make it necessary to take further action.[5]

Finally, with regard to the second statement in the *Romford Recorder*, alleging that comment had been muzzled by reference of the matter to the Committee of Privileges, the Committee observed:

> Comment on a matter which has been referred to the Committee of Privileges before the report of the Committee thereon has been made to, and considered by, the House may constitute a contempt, but to refrain from comment cannot do so. The allegation that such comment was " muzzled " by action of Your Committee is without foundation, but Your Committee do not consider that that statement is worthy of any further notice.[6]

No debate took place in the House on this Report.

TASMANIA

Contributed by the Clerk of the Legislative Council

Premature publication of evidence given before Joint Committee. —In July, 1957, a witness to a Joint Committee published her evidence in a monthly magazine soon after having given the same before the Joint Committee on the Licensing Bill, 1957, and Existing Liquor Laws. An apology was promptly made, and when, in a Special Report dated 18th July, the Committee reported the facts of the publication, and apology, to both Houses, no action was taken.[7]

INDIA: LOK SABHA

Contributed by the Secretary of the Lok Sabha

Procedure to be adopted for production of documents connected with the Proceedings of the House before Courts of Law.—On 31st August the Additional Magistrate, 1st Class, Tiruchirappalli, sent a summons addressed to the Speaker, "to cause the production of letter dated 20th December, 1956, signed by R. Govindan and addressed to Shri H. V. Kamath then member of Lok Sabha and passed on to the Speaker on the floor of the House during discussion of the Ariyalur Train Disaster", in his court on 7th September, 1957. The document was required in connection with a defamation case filed by Shri P. K. Madhava Menon, Divisional Superintendent, Southern Railway, Tiruchirappalli, against Shri R. Govindan.

On 3rd September the Registrar, City-sessions Court, Bombay, sent a letter to the Secretary, Lok Sabha, requesting him to send a responsible officer for giving evidence in the Court, on 9th September, 1957, supported by Register or relevant documents to show the dates of the sessions of Lok Sabha in December, 1950, January, February and March, 1951, and the dates on which Shri Damodar Swarup Bahadurmal Seth attended the sessions of Lok Sabha.

Sarvashri A. B. Vajpayee and Shivadin Drohar, Members of Lok Sabha, sent letters, dated 3rd and 5th September respectively, requesting for the supply of certified copies of answer to Unstarred Question No. 965 given on 27th August, 1957, for production in Courts in connection with election petitions. No formal communication of the receipt of these letters was made to the House, but on 7th September the Speaker (Shri M. Ananthasayanam Ayyangar), pursuant to Rule 227 of the Rules of Procedure, referred the above-mentioned three cases *suo motu* to the Committee of Privileges for report.

The Committee of Privileges considered the above-mentioned cases at their sitting held on 11th September. The report of the Committee was laid on the Table on 12th September.

The Committee made the following recommendations:

(i) That no member or officer of the House should give evidence in a Court of Law in respect of any proceedings of the House or any Committee of the House or any other document connected with the proceedings of the House or in the custody of the Secretary of the House without the leave of the House being first obtained.

(ii) When the House was not in session, the Speaker might in emergent cases allow the production of the relevant documents in Courts of Law in order to prevent delays in the administration of justice and inform the House accordingly of the fact when it re-assembled. In case, however, the matter involved any question of privilege, especially the privilege of a witness, or in case the production of the document appeared to him to be a subject for the discretion of the House itself, he might decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report.

(iii) Whenever any documents relating to the proceedings of the House or any Committee thereof were required to be produced in a Court of Law, the Court or the parties to the legal proceedings should request the House stating precisely the documents required, the purpose for which they were required and the date by which they were required. It should also be specifically stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before a Court of Law.

(iv) When a request was received during sessions for producing in a Court of Law a document connected with the proceedings of the House or Committees or which was in the custody of the Secretary of the House, the case might be referred by the Speaker to the Committee of Privileges. On a report from the Committee, a motion might be moved in the House by the Chairman or a member of the Committee to the effect that the House agreed with the report and further action should be taken in accordance with the decision of the House.

(v) In regard to the three cases referred to it, the Committee recommended:

(*a*) That the Speaker might authorise the Secretary to designate an officer of the Lok Sabha Secretariat to produce the letter dated 20th December, 1956 signed by Shri R. Govindan and addressed to Shri H. V. Kamath, in the Court of the Additional Magistrate, 1st Class, Tiruchirappalli.

(*b*) That the Speaker might authorise the Secretary to designate an officer of the Lok Sabha Secretariat to produce the relevant documents showing the dates of the sessions of the Provisional Parliament from December, 1950 to March, 1951 and the registers showing dates on which Shri Damodar Swarup Bahadurmal Seth, Ex-Member, attended the above-mentioned sessions of the House.

(*c*) That certified copies of answer given to Unstarred Question No. 965 in the Lok Sabha on 27th August, 1957 might be supplied to Sarvashri A. B. Vajapyee and Shivadin Drohar.

(vi) That normally certified copies of the documents required to be produced in Courts of Law should be considered sufficient evidence in Courts of Law. If necessary, the relevant provisions of the Indian Evidence Act, 1872, might be amended accordingly.[8]

On 13th September the Chairman of the Committee of Privileges (Sardar Hukam Singh) moved:

That this House agrees with the First Report of the Committee of Privileges laid on the Table on the 12th September, 1957.

Shri Sadhan Gupta, a Member, while supporting the motion, stated that when some documents in the custody of the House were to be called for in a court, it should be done by way of petitioning the House and the language used should be such as not to offend the dignity of the Legislature. He further suggested that the recommendations of the Committee, together with the motion accepting those recommendations, should be sent to every High Court, District Judge and District Magistrate in the States for their information, so that they might know the procedure in respect of calling documents from the custody of the House.

The Minister of Law (Shri Asoke K. Sen) stated that Government had no objection to the procedure suggested by Shri Sadhan Gupta.

The Speaker observed that summons sent to ordinary individuals were different from summons to produce documents sent to Collectors and other high Public Officers which were sent in the form of letters of request. The same form might be followed for making requests for production of documents in the custody of the House.

The Minister of Law, agreeing with the Speaker, suggested that the Home Ministry might be requested to publicise the privileges enjoyed by the House in the matter of production of documents to all the State Governments, so that they might be circulated to different courts for information.

The motion was adopted by the House.

Posing as an elected Member of the House and taking oath.—On 15th July, when the Speaker, Lok Sabha, called newly elected Members to make the prescribed oath or affirmation, a person, who gave his name as Birendra Kumar Majumdar, came to the Table, took the prescribed oath and signed the Roll of Members. Later, on the same day, it was discovered that he had not been elected to Lok Sabha. The Speaker then observed as follows:

A serious breach of privilege of the House occurred this morning, when a person by the name of Mr. Majumdar took the oath as a member of this House. His name was not in Secretary's list and when the Secretary pointed it out to him, he replied that he had been elected a member and that a Member of Parliament, Mr. Khuda Baksh, knew him. He then immediately proceeded to shake hands with the Chair and signed the Roll of Members. Immediately an enquiry was made whether in fact he was a member and whether an intimation had been received from the Returning Officer. Meanwhile, on further questioning the person concerned, it appeared that he was mentally not sound. An enquiry was also made from Mr. Khuda Baksh, who confirmed about his mental state and said that although Mr. Majumdar had contested the election he had lost it. A further enquiry was made by the Watch and Ward Officer in the matter and that report also confirms the same conclusion. In view of this, the name of Mr. Majumdar may be expunged from the List of Members who have taken oath this morning and also his signature may be expunged from the Roll of Members.

The action of Mr. Majumdar is a serious affront to the dignity of the House and constitutes a contempt.

I suggest that the House may take cognizance of the matter and take such further action as it deems fit.

The Prime Minister and Leader of the House, Shri Jawaharlal Nehru, moved the following motion, which was adopted by the House:

This House is of opinion that a person who gave his name as Birendra Kumar Majumdar and posed as an elected member of this House and who signed the Roll of Members as such this morning has committed contempt of this House and the Speaker is authorised to send him to a Medical Board for examination of his mental state and to take such further action as the Speaker may think fit on receipt of the report of the Medical Board.

The Prime Minister further stated that in some foreign Parliaments

there were definite rules about the presentation of credentials or introduction of a new member by two other members. It was therefor necessary to have some such rules in Lok Sabha to avoid the possibility of such a thing happening in future.

The Speaker remarked that he would consider the possibility of having rules on the subject.

On 12th August the Speaker made the following statement:

I want to make a statement on the person who impersonated the other day as a Member of this House. He was sent to the hospital for examination. The House will recollect that on the 15th of July, 1957, a person who gave his name as Birendra Kumar Majumdar had committed contempt of the House by posing as an elected member of the House and signing the roll of Members as such. I was authorised by the House to send Birendra Kumar Majumdar to a Medical Board for examination of his mental state and to take such further action as I might think fit on the advice of the Medical Board. The Medical Board has observed Shri B. K. Majumdar for a sufficiently long period, and examined him individually and collectively on two separate occasions. The Medical Board has stated that Shri B. K. Majumdar is a person of unsound mind, and his is a case of schizophrenic reaction, a type of insanity. In view of this medical report, I have decided not to take any action against Shri Majumdar.

A copy of the medical report of the said Medical Board appointed to examine Shri B. K. Majumdar is laid on the Table of the House.

Shri Achar, a Member, enquired how there could be a contempt of the House if Shri Majumdar was a lunatic. The Speaker replied:

It is therefore that I said no action is called for. Originally, before knowing who he was, I thought there was a contempt of the House and it authorised me to take action against him. I got him examined. In view of the medical report, there is no contempt of the House, and I have discharged him.'

Premature publication by Press Information Bureau of an answer to a question: apology accepted.—On 26th July, before the Lok Sabha took up Questions, Shrimati Renu Chakravartty, M.P., raised a question of Privilege arising out of the publication by the Press Information Bureau of an Answer to a Question before it was given on the Floor of the House.

Shrimati Chakravartty stated that an Unstarred Question No. 182 on Dandakaranya Rehabilitation Scheme, originally put down for answer on 23rd July, was transferred to the list of Questions for Oral Answers for 31st July; and the Members were informed of the postponement by a Corrigendum on 20th July. However, a Press Note issued by the Press Information Bureau on the 23rd July contained the information purported to have been given in response to Unstarred Question No. 182. This, the Member contended, constituted a contempt of the House.

The Speaker observed that the Member might send a formal notice in writing when he would enquire into the matter.

On 27th July the Speaker made a reference to the above matter in the House and informed Lok Sabha that a written apology had been received from the Principal Information Officer (Shri T. R. V.

Chari). The letter of apology addressed to Secretary, Lok Sabha Secretariat, read as under:

I should be grateful if the following submission may kindly be placed before the Speaker.

On the 23rd July, a press release of an answer to Unstarred Question No. 182, which had been printed on the Order Paper for 23rd July had been made by the Press Information Bureau on the basis of material received from the Ministry of Rehabilitation that morning.

It is with great distress that we have learnt of the fact that the subsequent change of the unstarred question from the printed list for 23rd July to 31st July had escaped the notice of the officer responsible for the release. The circumstances under which the copies containing the Minister's answer for the 23rd July were received in the Press Information Bureau on the morning of that day, had unfortunately not suggested the possibility of any change in the order of questions.

It is learnt that the Ministry of Rehabilitation are also taking steps to make amends for the omission to warn the Press Information Bureau about the change in the date of answer. Nevertheless, the responsibility of the Press Information Bureau cannot be minimised.

A close check is kept during question hour in regard to questions both for variation, if any, in the oral answer and whether or not the question has been reached. It is extremely regretted that equal care in regard to last minute variations in the printed list for unstarred questions was not taken in this case. Orders have, therefore, been issued to Officers handling Parliamentary questions to handle both starred and unstarred questions with equal vigilance. With great contrition the Press Information Bureau would beg to assure you, Sir, that there will be no repetition of such a lapse in the future.

The Speaker then observed:

In view of this, I am sure the House would not expect me to proceed in this matter further but accept what has been stated; and I am sure a responsible officer, as he gives an assurance, will not commit similar mistakes in future. The matter is dropped at this stage.

INDIA: BOMBAY LEGISLATIVE ASSEMBLY

Contributed by the Secretary of the Bombay Legislature Department

Incitement of Members to disorderly conduct.—On 14th June the Editor of *Prabhat*, a Marathi Daily of Poona, wrote an editorial under the caption "Mumbai Rajyache KaideMandal Wa Samitiche Amdar" (Bombay Legislature and Samiti Members), the sense of which may be seen from the following extracts:

The Nehru Government and the Morarji Government have inflicted great injustice on Maharashtra and the Marathi people. The Samiti representatives should bear this fact in mind for all the time. . . . There is no reason to care even for what is called parliamentary practices and etiquette. For, what etiquette or democratic decency has the Congress itself observed? What do the cruel, inhuman firings in Bombay which will make even monsters hang their heads in shame indicate? In what frame of parliamentary democracy do things like the deliberately committed massacre of women and children and the shamelessness that was betrayed in hushing up all this without an inquiry fit in? . . . There is absolutely no reason of feeling any qualms about parliamentary practices, while dealing with people who committed so much vio-

lence, such atrocities and such cruelty. . . . The Samiti members should always make a reference to firings and detentions, whether it is in context or not . . . transforming the Legislature into a vegetable or fish market. . . . They should flout on such occasions whatever the ruling that is given by the Speaker. Even if they are ordered to leave the House, that order should be flouted. . . . Only if our M.L.A.s create such occasions every day when the session of the Legislature is in progress, the Marathi people will think that they are performing their duty in the right manner.

On 21st June the Chief Minister of Bombay raised a question of privilege of the House, stating that this editorial had attempted to induce or procure Samiti Members of the House:

(*a*) to commit acts of disrespect to the House, and in particular to the Speaker;
(*b*) to commit acts calculated to interfere with the procedure of the House;
(*c*) to commit acts of disobedience to the lawful orders of the House, and in particular of the Speaker; and
(*d*) generally to disregard and flout parliamentary decorum and procedure and the ruling of the Speaker and thereby to create utter confusion in the conduct of the business of the House.

After a short debate, the Speaker referred the question of breach of privilege to the Committee of Privileges.

In their Report to the Assembly, dated 11th July, the Committee held the Editor guilty not only of breach of privilege of the House but also of contempt of the House and its Speaker and recommended that the Editor should be called to appear at the Bar of the House and should be further asked to give an unconditional apology for his acts and should publish the same in all the daily Newspapers of the State (Bombay) at his cost, and that until he did so he should remain in imprisonment till the House was prorogued.

As regards the Printer and Publisher, the Committee held that he also was guilty of the breach of Privileges and of contempt, as he could not under the law escape the responsibility for matter which is printed and published by him; but the Committee recommended that the ends of justice would be met by administering to him a stern admonition after calling him to the Bar of the House.

Three members of the committee (from the Opposition Party) submitted minutes of dissent to the report. One alleged that there had been no breach of privilege, on the ground that there was no duly and legally functioning House at the time (the session having been convened for 17th June, and the taking of oaths not having been completed till 19th June). The other two, while conceding a breach of privilege, considered that a warning to the editor and printer would meet the ends of justice.

The Report was considered by the House on 20th July, 1957. The House accepted the findings of the Committee as regards the facts of the case, although modifying its recommendations as to punishment,

and accordingly resolved on a motion of the Chief Minister (Shri Y. B. Chavan), by a majority of 210 in favour and 86 against:

That this House having considered the Report of the Privileges Committee appointed on 21st June, 1957, in the matter of breach of privilege by the Editor and the Printer and Publisher of the daily *Prabhat* of Poona, by the publication of the editorial article in the issue of the same paper dated the 14th June, 1957, under the caption " Mumbai Rajyache KaideMandal Wa Samitiche Amdar " accepts the findings of the Committee and accordingly resolves—

(1) that Shri C. H. Gandhi, Printer and Publisher of the daily *Prabhat* of Poona, and Shri V. R. Kothari, Editor of the daily *Prabhat* of Poona are adjudged guilty of breach of privilege and of contempt of this Hon. House and of the Speaker; and
(2) that they may, therefore, be called to appear at the bar of the House and be administered an admonition by the Hon. Speaker.

Accordingly both the Editor and the Printer and Publisher of the daily *Prabhat* were called to appear at the Bar of the House and were admonished by the Speaker.[10]

India: Madhya Pradesh Vidhan Sabha

Inaccurate reporting of proceedings.—On 4th July a complaint was made by Shri Ramkishore Shukla that the newspaper *Nav Prabhat*, in its issue that day, had inaccurately reported that on the previous day the Speaker had rejected nine adjournment motions, whereas in fact the decision had been withheld on two of them.

The matter was referred to the Committee of Privileges, which reported on 13th March, 1958, that although publishing false or perverted reports of proceedings in the House was a constructive contempt, there was no *mala fides* involved in the report under consideration; the Committee had moreover received an expression of regret from the editor of the paper, ascribing the mistake to the acoustics of the Chamber. In the circumstances the Committee recommended that no further action be taken.

Reflection on the conduct of a Member.—On 2nd December Shri Ramkishore Shukla gave notice of a privilege motion alleging that an article in the morning edition of the *Nav Prabhat* of 28th November had reflected on the conduct of Shri Jagadish Chandra Joshi as a Member of the House. Among the terms used in the article were the following:

The words which Shri Jagadish Chandra Joshi expressed . . . do not behove an educated and responsible legislator like Shri Joshi. Persons who had so far a good opinion of Shri Joshi have now changed their views. . . . A socialist like Shri Joshi, brought up under the patronage of aristocracy, thinks like kings. . . . Today it is natural for him to feel annoyed at the progress of the sole University of Bundelkhand, because with the progress of this university his imaginary castles are being destroyed like those built of playing cards.

Shri Shukla's motion was referred to the Committee of Privileges on 3rd December.

The Committee in their report, which was presented on 30th April, 1958, quoted the Report of the House of Commons Committee of Privileges of Session 1947-48 in which it was observed:

> Whilst recognising that it is the duty of Parliament to intervene in the case of attacks which may tend to undermine public confidence in and support of the institution of Parliament itself, your Committee think it important that, on the one hand, the law of Parliamentary privilege should not be administered in a way which would fetter or discourage the free expression of opinion or criticism, however prejudiced or exaggerated such opinions or criticisms may be, and that, on the other hand, the process of Parliamentary investigation should not be used in a way which would give importance to irresponsible statements.[11]

The Committee agreed with this opinion, and in its light considered that no breach of privilege had been committed by the impugned article and recommended that no further action be taken.

In a short Note of Dissent, Shri Ramkishore Shukla mentioned that the comment upon Shri Joshi contained in the Article was unfair and imputed motive; but in view of letters of apology which had been received from the author and editor, he agreed that no further action should be taken.

INDIA: MADRAS LEGISLATIVE ASSEMBLY

Contributed by the Secretary to the Madras Legislature

Policy statements published in the Press.—A statement in regard to the proposals of the Government regarding the abolition of District Boards was published in the Press when the Madras Legislative Assembly was in session. A question of Privilege was raised with reference to this in the House. The Leader of the House explained that the Government's intention was to make any policy statement, when the Legislature was in session, only on the floor of the House, that the Press Report in question was not completely correct and that no policy decision had been reached. In the circumstances the Speaker ruled that no *prima facie* case had been made out for a privilege motion being moved, but added that a convention should be established that when the House was in session all policy statements would be made in the House before they are released to the Press.[12]

Misleading report of Ministerial statement in the Press.—On 30th October a Tamil daily paper, *Dina Thanthi*, published a report of a ministerial statement under the heading "Murder case against Mutharamatinga Thevar: Case on Emmanuel's murder coming before the Court: Statement of Minister Subramaniam". A member brought it to the notice of the House on the 1st November, and pointed out that it involved a breach of privilege of the House, in

that the Minister had only stated that a case would be filed in connection with the murder, but had made no mention of any particular person to be charged. The Speaker postponed his ruling till the following day.

On 2nd November, the Speaker ruled that a *prima facie* case was made out. The Member who raised the question of privilege thereupon moved that the matter be referred to the Committee of Privileges. The Motion was carried.[13]

The Editor of the Newspaper, who was examined by the Committee at its meeting on 25th November, admitted that the heading was false and also expressed his regret specifically for the publication of such a heading. An apology also appeared in the City Edition of the daily, dated the 26th November, and in the Tiruchirappalli and Madurai editions also under the same date.

Taking these into consideration, the Committee was satisfied that the publication was false and constituted a breach of privilege of the House, but it considered that the apology tendered was sufficient and recommended that no further action in the matter be taken.

This was adopted by a motion made and carried in the House on the 16th February, 1958.

INDIA: MYSORE LEGISLATIVE ASSEMBLY

Contributed by the Secretary to the Legislature

Allegations concerning Members' vested interests in a bill.—When a motion to refer the Motor Vehicles Taxation Bill to a Select Committee was before the House, one Member remarked that no useful purpose could be served by referring the Bill to a Select Committee as some of the Members constituting the Committee had vested interests in regard to the subject matter of the Bill and as such no justice could be obtained from them. Objection was taken to these remarks. But the Speaker ruled that there was no *prima facie* case in it as remarks of the Member did not mean any reflection on another Member, but it was only a criticism of the Member on the motion before the House.

Aspersion of a Minister by a Member.—In the Government of Mysore the Education Minister is not a member of the Lower House. During question hour on 1st August when a member, Shri B. K. Puttaramiya was called to put the question standing in his name in the list of questions, he said that he did not want to elicit information from a non-member of the House, and could therefore not ask the question. Objection was taken to these remarks of the member on the ground that they were derogatory to the dignity of the Minister who had a right to sit and take part in the Business of the House by virtue of a Constitutional provision, and notice was given by Shri K. Puttaswarmy of a privilege motion, as follows:

That the persistent attitude and the statements of Sri B. K. Puttaramiya questioning the *locus standi* of the Education Minister in this House is in direct negation of the Constitution of India and also derogatory to the dignity of the House. I request that the Hon'ble Speaker may be pleased to rule that there is breach of privilege of the House and that this matter may be referred to the Committee of Privileges for such action as it deems necessary.

The Speaker ruled accordingly, on 3rd August, that there was a *prima facie* case of privilege in the question raised and referred it to the Committee of privileges.

The Report of the Committee was presented on 28th April, 1958. Quoting with approval Anson's dictum that freedom of speech in parliament "does not involve any unrestrained licence of speech within the walls of the House", the Committee said:

The words used by the Hon. Member Shri Puttaramiya clearly indicate that he was not asking the question because the hon. Minister who was put down to answer the same was a non-member. Article 177 of the Constitution confers on every Minister the right to speak in and otherwise take part in the proceedings of the Assembly and any Committee thereof. The only distinction between a Minister who is also a member of the Assembly and one who is not a member is that the latter shall not be entitled to vote. By refusing to recognise this right of a Minister, even though he is not a member, to answer questions in the House, the member is doing something which will tend to interfere with the business of the House. It is in this view that we have to hold that the statement of the Hon. Member Shri Puttaramiya mus be treated as a breach of privilege.

Nevertheless, in view of a letter which Shri Puttaramiya had written to the Secretary to the Legislature, indicating that he had not intended to cast any reflection or aspersion on the Minister, the Committee recommended that the matter be treated as closed.

India: Uttar Pradesh Legislative Assembly

Contributed by the Secretary of the Legislative Assembly

Alleged Arrest of Member.—On 25th March, 1957, the Speaker gave his ruling regarding the notice of a motion of breach of privilege given earlier (on 16th July, 1956) by Shri Raj Narain, M.L.A., relating to the alleged arrest of Shri Ram Lakhan, M.L.A.[14] The Speaker said that on 18th July, 1956, he had referred the matter to the Privileges Committee for investigation and report whether the member was actually arrested.[15] The report of the Privileges Committee had since been presented to him (the Speaker), and since the Committee was unanimously of the opinion that the arrest of Shri Ram Lakhan had not taken place, he would not give his consent to take up that question in the House.[16]

Pakistan: National Assembly

Criticism by foreign Ambassador of conduct of a Member.—On 9th April the following privilege motion, moved by Mian Muhammad

Iftikharuddin in the National Assembly, was referred to the Committee of Privileges:

> That on March 11, 1957, in Quetta, Mr. Horace A. Hildreth, the United States' Ambassador in Pakistan, in commenting upon my conduct as a Member of this august House made statements calculated to degrade me and interfere with the performance of my duties as a Member of this House and thereby committed a breach of privilege.

The relevant text of the speech of Mr. Horace A. Hildreth furnished by the United States Information Service was as follows:

> In a recent debate on foreign policy in the National Assembly an Opposition Member eloquently pleaded for Pakistan's severance of ties with my country. In commenting on American economic aid to Pakistan, with biting sarcasm and great cynicism, he reminded his listeners that all America was doing here was for its own sake and not for the sake of Pakistan.

In their Report, dated 24th November, the Committee observed that Article 56 of the Constitution mentioned certain privileges. In other respects, the privileges of the National Assembly and the persons authorised to speak therein were those of the Commons House of the Parliament of the United Kingdom of Great Britain and Northern Ireland in accordance with the provisions of paragraph 6 of Part III of the Fourth Schedule of the Constitution and sub-section (5) of section 4 of the Constituent Assembly (Proceedings and Privileges) Act, 1955.

The motion of privilege raised by Mian Iftikharuddin was not covered by Article 56 of the Constitution. It was, therefore, to be determined by the law and practice relating to the privileges of the House of Commons. The effect of these was that to constitute a breach of privilege, an attack on a Member should be in respect of his conduct as a Member of the House.

Mr. Horace A. Hildreth in his capacity as the Ambassador of the United States of America in Pakistan, while delivering his opening address of the United States Information Centre at Quetta had referred briefly to the criticism of the policy of the United States by a Member of the Parliament without naming him. Out of his observations two questions arose: firstly, whether the Ambassador could at all comment upon the speech of a Member of the Parliament *vis-à-vis* his country. Secondly, whether the language used by the Ambassador was in any way derogatory to the prestige of the Member of Parliament and as such sufficient to deter him from performing his duties. On the first question the Committee found nothing in the law and practice relating to the privileges of the House of Commons to suggest a difference between whether the speech of a Member of Parliament was commented on by an ordinary man or the accredited Ambassador of a foreign country. The right of criticising or commenting on the speech of a Member of Parliament existed in all democratic countries subject to certain conditions, and in the case of an Ambassador he was disqualified from taking part in local politics.

In this particular case, the Ambassador had not been taking part in local politics, but was merely commenting on a criticism on his country made by a Member of Parliament, and in so commenting he endeavoured to enlighten the public of the correct position.

The Committee could find no justification to suggest that a speech delivered by a Member of the Parliament cannot be the subject of criticism or comment; the ordinary law of defamation would, therefore, apply. On the other hand, a Member of the Parliament performing his duties as a Member was liable to be criticised in the performance of such duties. In fact, every citizen has a right to offer fair criticism and/or comment on a matter which is of public concern.

The second question was whether the language used by the Ambassador, and quoted above, was such as would amount to intimidation of the Member and to deter him from performing his duties in future. It was to be considered whether these remarks constitute a legitimate criticism or fair comment, and also whether the comments had been in respect of a Member's conduct as a Member of the House and whether they were definite enough to constitute a breach of privilege.

When a privilege motion of a similar nature was moved in the House of Commons based on the news-item published in the *Daily Mail* of the 3rd December, 1929, making general allegations of partiality, Mr. Speaker of the House of Commons had ruled that the allegations did not appear to be definite to constitute a matter of privilege. The matter referred to was so indefinite in its character that it did not constitute a question of privilege.[17]

The Committee also observed that an Ambassador was exempt from the local criminal and civil jurisdiction of the receiving State. No envoy could be obliged or even requested to appear as a witness in a civil or criminal or administrative court, nor was an envoy obliged to give evidence before a commissioner sent to his house.[18]

This right of exemption from appearing as a witness was regarded as appertaining to his office as an Ambassador and not to his person. He could not divest himself of this right except with the consent of his Government. Therefore, even if a diplomatic representative of the United States were called upon to give testimony under circumstances which did not concern the business of his mission, and which were of a nature to counsel him to respond in the interest of justice, he could not do so without the consent of the President obtained through the Secretary of State.[19]

The Committee therefore concluded that no breach of privilege was involved.

The Report of the Committee has not yet been debated in the National Assembly.

Criticism in a newspaper of action by Mr. Speaker.—On 12th April Mr. Farid Ahmad, M.P., invited attention of the House to the proceedings of the meeting held on the previous day—*i.e.*, 11th April, which was published in the *Morning News* (Karachi Edition),

dated the 12th April, wherein it was stated that on a point of order raised by him (Mr. Farid Ahmad) on the 11th April, Mr. Speaker gave a ruling thereon which he (Mr. Speaker) read from a written text.

In their Report dated 24th November[20] the Committee found that this question was not covered by Article 56 of the Constitution, and therefore fell to be determined by the law and practice of the House of Commons.

The Committee observed that Parliamentary privilege was the sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of the House, individually, without which they could not discharge their functions. Generally, any act or omission which obstructed or impeded either House of Parliament in the performance of its functions or which obstructed or impede any member or officer of such House in the discharge of his duties, or which had a tendency, directly or indirectly, to produce such results, might be treated as contempt. Speeches and writings which have been held to constitute breaches of privilege include reflections on the character of the Speaker and accusations of partiality in the discharge of his duties.[21]

The Committee was of the opinion that there had been no reflection on the character of the Speaker nor any accusation of partiality in the discharge of his duties, and therefore concluded that no breach of privilege was involved.

The Report of the Committee has not yet been debated.

Power of House to regulate its own proceedings.—Three Privilege notions were moved by Mr. M. A. Khuhro, M.P., Mr. Farid Ahmad, M.P., and Mian Muhammad Iftikharuddin, M.P., at the meeting of the National Assembly held on 22nd August and referred to the Committee of Privileges respectively, as follows:

(i) Questions of privilege regarding breach of the privilege of the Members of the National Assembly in that the House has not been provided with Rules of Procedure, which the Rules of Procedure Committee appointed by the House during its Dacca Session in October, 1956, was asked to frame and in respect of which a report has not yet been submitted to the National Assembly by the said Committee. This has resulted in the President issuing amendments in the Rules of Procedure on the 19th August, 1957, thus infringing the rights of privileges of the Members of the National Assembly.

(ii) & (iii) Questions of privilege regarding encroachment made upon the rights and privileges of the Members of this House by the amendments made in the Rules of Procedure of the National Assembly by the President as per Ministry of Parliamentary Affairs' Notification No. F. 84(1)/57-P.A., dated the 19th August, 1957, published in *Gazette Extraordinary* of 19th August, 1957, in particular by curtailing the right and privilege of Members of moving only one adjournment motion and one motion of privilege on a single day of sitting and further encroaching upon the rights of Members of asking questions.

In their Report, dated 24th November,[22] the Committee found as follows:

Privileges of the Members of the National Assembly are regulated by Article 56 and paragraph 6 of the Fourth Schedule to the Constitution. But the right of the Members to take part in the proceedings of the House, including the asking of questions and the moving of privilege and adjournment motions, is determined by the Rules of Procedure.

Subject to the provisions of the Constitution, the procedure of the National Assembly shall be regulated by Rules of Procedure framed by the Assembly [Article 55(1) (a)]. Until the rules have been framed by the Assembly under the above Article, the Rules of Procedure of the Constituent Assembly (Legislature) as amended by the President determine the right of the Members to take part in the proceedings of the House (paragraph 5 of the Fourth Schedule to the Constitution).

Mr. M. A. Khuhro, M.P., who was present at the meeting of the Committee, was not anxious to press his question of privilege and agreed to withdraw it. Since the Rules of Procedure Committee of the National Assembly has already finalised its Report and decided to present it in the next session of the Assembly, the Committee recommends to the Assembly to drop the above three questions of privileges.

This Report has not yet been debated by the Assembly.

Reflection in a newspaper on the conduct of Members.—On 23rd August Mian Mumtaz Mohammad Khan Daultana, M.P., moved the following question of privilege:

That the action of a Karachi daily—namely, the *Times of Karachi*—in publishing the sentence "Some members held up the business of the House" in its issue of to-date on the front page under the caption "Turbulent Scenes in N. A." pertaining to the proceedings of the meeting of the National Assembly of Pakistan held on 22nd August, 1957, reflecting upon the conduct of the Members in the performance of their functions in this House and attributing motives to them, constitutes a breach of privilege of the Members of this House.

The relevant portion of the proceedings which appeared in the *Times of Karachi* is reproduced below:

TURBULENT SCENES
in N. A.

SPEAKER THREATENS
DISCIPLINARY ACTION

4 Adjournment Motions Ruled Out : 1 Withdrawn

THE TIMES OF KARACHI *Service*

KARACHI, August 23: THERE were angry scenes, cross-talk and hot exchanges when the August Session of the National Assembly opened at 3 p.m. yesterday. They took a good part of the three-hour sitting.

. . . Some members held up the business of the House.

In their Report dated 24th November,[23] the Committee of Privileges found that this question was not covered by Article 56 of the

Constitution, and therefore fell to be determined by the law and practice relating to the privileges of the House of Commons. The effect of these was that to constitute a breach of privilege, an attack on a Member should be in respect of his conduct as a Member of the House.[24]

The *Times of Karachi* had described the proceedings of the meeting of the National Assembly held on the 22nd August. In deciding whether a breach of privilege had occurred, it had to be considered whether this news item did not constitute legitimate criticism or fair comment.

The Committee considered that the right to criticise a Member of Parliament, in his public capacity, existed in all democratic countries subject to certain conditions. There was no justification to suggest that a Member of Parliament performing his duties as a Member was not liable to be criticised in the performance of such duties. In fact, every citizen had a right to offer fair criticism and/or comment on a matter which is of public concern.

The Committee therefore concluded that no breach of privilege was involved.

No debate has yet taken place on the Report of the Committee.

Northern Rhodesia Legislative Council

Contributed by the Clerk of the Legislative Council

Premature publication of Select Committee Proceedings.—On 18th June the Member for the Livingstone Electoral Area (Mr. F. S. Derby) made a complaint that the *Northern News* newspaper had been guilty of a breach of privilege. The newspaper had published in its issue of the 28th May, 1957, certain matters which had been considered by the Select Committee on the Businesses Bill before that Committee had reported to the Council. A copy of the newspaper was delivered in, and the matter of complaint deferred till the following day.[25]

On 19th June, Mr. Derby, on proceedings being resumed, maintained that the article in question constituted a breach of privilege, inasmuch as it was contrary to the provisions of Standing Order No. 128. This Standing Order lays down that the proceedings of, evidence taken by, or the report of any Select Committee, or a summary of such proceedings, evidence or report, shall not be published by any person until the Report of that Committee has been laid on the Table.

The Member for the Midland Electoral Area, Mr. J. Gaunt, who was Chairman of the Select Committee in question, was heard in his place and offered an apology in so far as he was responsible. He explained that he had mistakenly given permission to a Press representative to attend a meeting of the Select Committee (Standing Order No. 133 requires the leave of the Committee).

Mr. Speaker then read a letter of apology which he had received

from the Editor of the *Northern News*. He declined to submit the case to the Council as a matter of privilege, inasmuch as the said newspaper acted in excusable error and had apologised fully.[26]

MAURITIUS

Contributed by the Clerk of the Legislative Council

Defamation of the Council.—At a sitting of the Legislative Council held on the 26th March, 1957,[27] an honourable Member drew the attention of the Chair to a passage in a recent issue of the newspaper *L'Epee* which occurred in a leading article entitled " Les Bidonneurs ou les Assassins sans vergogne ". The passage read as follows:

Il y a des salauds qui, au Conseil, prennent des mesures pour que dure au pays la misère sur laquelle ils comptent pour arriver.

Mr. Speaker gave consideration to the matter in the light of Section 6(1) (n) of the Legislative Council (Privileges, Immunities and Powers) Ordinance, 1953. That section makes it an offence *inter alia* of Contempt of Council to publish any defamatory statement or writing upon the Council, but goes on to provide that no such statement shall be held to be a defamatory statement unless it is punishable under section 288 of the Penal Code Ordinance.

According to that section, a defamation includes any imputation or allegation of a fact prejudicial to the honour, character or reputation of the person to whom such fact is imputed or alleged.

Mr. Speaker at a subsequent sitting on 2nd April declared that in his view the facts reported by the Hon. Member amounted *prima facie* to an offence under Section 6(1) (n) of the Ordinance referred to above.

The Procureur and Advocate-General was accordingly requested to institute proceedings against the Editor of *L'Epee*.[28]

At the proceedings before the Port Louis District Court, Third Division, the Editor pleaded not guilty. While he did not challenge the evidence led by the prosecution he averred that the incriminating article did not aim at attacking the Legislative Council but was only intended to draw the attention of the public to certain tendencies of certain Members of the Council.

The Magistrate, in a judgment delivered on 24th June, came to the conclusion that all the elements of the defamation had been proved and that the defamation was directed against the Council. He considered the offence to be a very serious one and that—

the punishment must be such as to deter others who might feel so inclined from playing lightly with the honour, reputation and dignity of the Legislative Council.

He accordingly sentenced the Editor to undergo six weeks' imprisonment with hard labour. (The maximum penalty for such an offence is imprisonment not exceeding three months or a fine not exceeding one thousand rupees.)

The Editor gave notice of Appeal. The Supreme Court, on appeal, revised on 23rd October the judgment of the Magistrate, stating *inter alia* that—

> the absence of any previous conviction against the appellant should in this case be taken into account in assessing the penalty. The nature of the defamation, its circumstances, apparent weight and probable effect, are also relevant factors to be considered. We think that a term of imprisonment was in the circumstances manifestly excessive. The public have the right to criticise the measures passed by the Legislative Council, but unsubstantiated and offensive attacks of this kind cannot be tolerated, even though in a given case they are not likely to be taken seriously by many readers. In the circumstances, a pecuniary penalty would be adequate. We accordingly substitute for the sentence of six weeks' imprisonment a fine of three hundred rupees.

SIERRA LEONE: HOUSE OF REPRESENTATIVES

Contributed by the Clerk of the House of Representatives

Premature publication of report of Committee.—On 14th October, before the commencement of Government business, the Financial Secretary (Mr. A. Macleod Smith) rose to complain that there appeared to be a *prima facie* breach of privilege of the House, in that on 1st October a local newspaper, the *Daily Mail*, had published the decision of a Select Committee of the House appointed to review the emoluments of Ministers and Members of the House. The Committee had held its meetings in private and had not yet reported to the House. The article carried the headline—

MINISTERS MAY GET £1,000 RISE IN SALARY

and went on—

> Ministers and Members of the House of Representatives are to have substantial increases in their emoluments. This is the result of a decision taken by a Select Committee of the House.

Producing and laying on the Table a copy of the *Daily Mail* in question, the Financial Secretary referred Mr. Deputy Speaker (who was then presiding, the Speaker being away in England on sick leave) to Standing Order No. 40(2), which reads:

> The deliberations of any Select Committee which have not been reported to the House shall not be published by any member of such committee or by any other person without leave of the President

and then moved that a Select Committee (there being no Standing Committee on Privileges) be appointed to investigate the matter, to decide whether or not a breach of privilege had been committed and, if so, by whom, and to report its findings to the House.

The motion having passed the House, the matter was accordingly referred to a Select Committee specially appointed for the purpose by the Chair.[29]

On 5th November the Committee's report was brought up by its Chairman (the Acting Attorney-General) and laid on the Table of the House.[30] The report stated that the Committee had heard evi-

dence from all the Members who had sat on the Review of Emoluments Committee and from the typists who had helped to type the draft report, but were unable to find out how the leakage of information had occurred. The report continued—

> The chief reporter of the *Daily Mail* who supplied the news item in question would not, in accordance with the etiquette of his profession, say where he got his information, except that it was based on rumour which he afterwards checked through his reliable news sources.
>
> In our opinion there can be no doubt that there was a premature publication in the *Daily Mail* of the deliberations of the Select Committee to review the remuneration of Members and, if Standing Order 40 is properly applicable to persons who are not members of the House, there has consequently been a breach of that Standing Order by the *Daily Mail*, but we are unable on the evidence presented to us to say who communicated that information to the person who was then the *Daily Mail* Chief Reporter.

On 6th November the House resolved, on a motion by the Acting Attorney-General:

> That this House accept the Report of the Select Committee on the alleged breach of Standing Order No. 40 in connection with the publication of decisions of a Select Committee appointed to review the remuneration of Members of the House of Representatives which had not been reported to the House, and that suitable punishment be inflicted by the House on the Sierra Leone *Daily Mail*, Limited, which has been found guilty of the breach.

The House then *ordered*, firstly, that the punishment should be a *reprimand*; and secondly, that Mr. Deryk James, Manager of the Sierra Leone *Daily Mail* be summoned to appear at the bar of the House for the purpose at 10 a.m. on Monday, 11th November.[31]

On that date, pursuant to Order of the House, Mr. Deryk James, Manager of the Sierra Leone *Daily Mail*, after Prayers and before the commencement of business, appeared at the bar of the House.

After Mr. Deputy Speaker (in the Chair) had addressed him regarding the article, Mr. James apologised on behalf of the Sierra Leone *Daily Mail* for the breach of privilege caused by premature publication of the Remuneration Review Committee's recommendations.

Mr. Deputy Speaker then reprimanded Mr. James on behalf of the *Daily Mail* and discharged him.[32]

[1] Pp. 110-6. [2] 563 *Hans.*, cc. 40-52. [3] H.C. 74 (1956-57). [4] *Ibid.*, para. 2. [5] *Ibid.*, paras. 4-6. [6] *Ibid.*, para. 8. [7] *L.C. V. & P.*, No. 17 of 1957, Entry No. 13; *H.A. V. & P.*, No. 17 of 1957, Entry No. 32. [8] 1st Report of the Committee of Privileges, pp. 1-6. [9] *L.S. Deb.*, 15th July and 12th August. [10] Bombay *L.A. Deb.*, 1225-73. [11] H.C. 112 (1947-48), para. 6; *see also* THE TABLE, Vol. XVII, pp. 325-8. [12] 1957 Madras *L.A. Proc.*, III, No. 8. [13] *Ibid.*, VI, No. 3. [14] *See* THE TABLE, Vol. XXV, p. 118. [15] *Ibid.*, p. 119. [16] 181 *U.P. Assem. Proc.*, 346. [17] 232 *Hans.*, c. 2154. [18] Oppenheim's International Law, Vol. 1, 6th Ed., pp. 715-7. [19] Moore's International Law Digest (1906), Vol. IV, pp. 642 and 645. [20] Annexure A. [21] May, 16th Ed., pp. 42, 43, 109, 117, 124. [22] Annexure B. [23] Annexure C. [24] May, 16th Ed., pp. 42, 43, 109. [25] 92 N. *Rhod. Hans.*, c. 27. [26] *Ibid.*, cc. 82-9. [27] 1957 *Maur. Hans.*, No. 4, pp. 1-2. [28] *Ibid.*, No. 5, p. 2. [29] *Minutes*, 9th October-12th November, 1957, pp. 24-5. [30] *Ibid.*, p. 63. [31] *Ibid.*, p. 88. [32] *Ibid.*, p. 112.

XVI. MISCELLANEOUS NOTES

1. CONSTITUTIONAL

South Australia: House of Assembly (Deputy Leader of Opposition).—Statutory and financial recognition was accorded for the first time to the Deputy Leader of the Opposition in the South Australian House of Assembly by legislation passed during 1957 (Act No. 49 of 1957). As from 14th November, 1957, in addition to his salary as a Member of Parliament, the Deputy Leader of the Opposition receives a further £250 per annum.

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

Union of South Africa (Executive Committees of Union Provinces).—The South Africa Act, 1909, (9 Edw. 7, Ch. 9) was amended during 1957 by the Union Parliament (*see* Act No. 1 of 1957, sections 1 and 2) in the following provisions affecting members of the Executive Committees of the Provinces of the Union:

> *S. 78(3)*: A member of an Executive Committee may now be appointed as a deputy-administrator without being disqualified from sitting as a member of the Provincial Council.
>
> *S. 78(4)*: A vacancy in the Executive Committee caused by the appointment of a member as deputy-administrator is not filled as a casual vacancy. A Committee member resumes his office as such on the termination of his appointment as deputy-administrator.
>
> *S. 79*: An Executive Committee member, while deputy-administrator, retains his right to vote as member of the Provincial Council.

It should be noted that the Administrator has no right to vote in the Council.

(*Contributed by the Clerk of the Cape Provincial Council.*)

India (State Legislative Councils).—The States Reorganisation Act, 1956 (No. 37 of 1956) (see THE TABLE, Vol. XXV, pp. 76-82), provided for the establishment of a Legislative Council for the enlarged State of Madhya Pradesh, increasing thereby the total number of States with bicameral Legislatures to eight. Subsequently, the Legislative Assembly of Andhra Pradesh passed a resolution in accordance with Article 169 (1) of the Constitution recommending the creation of a Legislative Council for that State. The Constitution (Seventh Amendment) Act, 1956, raised the maximum strength of the Legislative Council of a State as laid down in Article 171 (1) of the Constitution from one-fourth to one-third of the strength of the Legislative Assembly of the State and thereafter representations were made by State Governments to increase the strength of the existing Legislative Councils.

The Legislative Councils Act, 1957 (No. 37 of 1957), accordingly provides for the creation of a Legislative Council for Andhra Pradesh. It also provides for increasing the strength of the Legislative Councils of the other States having such Councils and for the distribution of the increased strength among the five categories specified in Article 171 (3) of the Constitution.

The Act has also amended the Representation of the People Act, 1950 (No. 43 of 1950), so as to substitute for the Third Schedule to that Act a new Schedule showing the strength and composition of the Legislative Council of Andhra Pradesh and the revised strength and composition of the Legislative Councils of other States.

(*Contributed by the Secretary of the Rajya Sabha.*)

India (Creation of new Administrative Area).—The Naga Hills-Tuensang Area Act, 1957 (No. 42 of 1957), creates a new administrative unit to be named "the Naga Hills-Tuensang Area" comprising the tribal areas which at the commencement of the Constitution were known as the "Naga Hills District" specified in Part A of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution and Tuensang Frontier Division of the North-East Frontier Agency or the Naga Tribal Areas specified in Part B of that Table. This new unit will be administered by the Governor of Assam as the agent of the President, but will be distinct from the North-East Frontier administration.

This Act has accordingly amended paragraph 20 of the Sixth Schedule to the Constitution so as to substitute "2. The Naga Hills-Tuensang Area" for the item "2. The Naga Tribal Area" in Part B of the Table appended to that paragraph and to make some consequential changes in the said paragraph.

The Act has also made certain consequential amendments in the Representation of the People Act, 1950 (No. 43 of 1950), so as to provide for the nomination by the President of one additional member to the House of the People to represent this new unit and to do away with the representation in the Assam Legislative Assembly of the Naga Hills District which is no longer under the administration of the Government of Assam.

(*Contributed by the Secretary of the Rajya Sabha.*)

India: Lok Sabha (Removal of Disqualification).—Section 4 of the Prevention of Disqualification Act, 1953, temporarily declared the offices of Chairman and member of a Committee, other than one set up for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into or collecting statistics in respect of any such matter, eligible for membership of Parliament till December, 1957. The period was further extended by one year through an amending Act—viz., the Prevention of Disqualification (Amendment) Act, 1957.

(*Contributed by the Secretary of the Lok Sabha.*)

Bombay: Legislative Council (Composition).—The following important changes were made by the Act of Parliament in respect of the constitution of the Legislative Councils by the Legislative Councils Act, 1957 (No. 37 of 1957).

(i) The number of seats in the Bombay Legislative Council was increased from 94 to 108 (*vide* Section 5(1) of the Act).

(ii) The Constituencies were changed and fresh constituencies were formed (*vide* Table below Section 5(3) (*a*) of the Act and also Second Schedule to the Act).

(*Contributed by Shri H. B. Shukla, Deputy Secretary, Bombay Legislature Department.*)

Madras: Legislative Council (Composition).—By an Act of the Indian Parliament—namely, the Legislative Councils Act, 1957—the strength of the Madras Legislative Council has been raised from 50 to 63 consisting of 21 Members from the Local Authorities Constituencies, 21 Members from the Madras (Assembly) Constituency, 6 Members from the Madras (Graduates) Constituency, 6 Members from the Madras (Teachers) Constituency and 9 Members nominated by the Governor.

(*Contributed by the Secretary to the Madras Legislature.*)

Uttar Pradesh (Ministers of State not disqualified).—The U.P. State Legislature Members (Prevention of Disqualification) (Amendment) Act, 1957 (U.P. Act No. XXV of 1957), provided that the office of a Minister of State is not to disqualify the holder thereof for being chosen as, and for being, a member of the U.P. Legislature.

(*Contributed by the Secretary of the Legislative Assembly.*)

Pakistan (Power of Governor to dissolve an interim Provincial Assembly).—On 5th August the Supreme Court gave its ruling on the following question which had been specially referred to it by the President of the Republic:

> Is the Governor of a Province in Pakistan empowered under Article 83 or any other provision of the Constitution or any other principle of law to dissolve the Provincial Assembly of his Province functioning under Article 225 of the Constitution?

The Supreme Court decided that the Governor had no power to dissolve the Provincial Assembly functioning under Article 225. This conclusion was supported by the following among other reasons:

(1) On the words of Article 225 itself there can be no escape from the conclusion that an interim Provincial Assembly is entitled to exercise the powers, and is under an obligation to perform the duties, of a Provincial Assembly under the Constitution so long as a new Provincial Assembly is not constituted under the Constitution to take its place. The provision fixes the duration of the interim Assembly, which commences from the Constitution Day and ends on the day on which a new Provincial Assembly is constituted under the Constitution. Therefore, until that event happens the interim Assembly must continue to function and any premature dissolution of it by an act of the Governor will be in contravention of the Article, because, *ex hypothesi*, if the interim Assembly is dissolved, the dissolution must necessarily be followed by a period during which the dissolved Assembly cannot exercise the powers

and perform the duties imposed upon a Provincial Assembly by the Constitution.

(2) If an interim Assembly was dissolved, and machinery having not yet been set up for bringing into existence another Assembly under the permanent provisions of the Constitution, the dissolution would land the country into a jungle of confusion not envisaged by the framers of the Constitution. Nor could section 234 be invoked to give the President power to form constituencies and to order preparation of electoral rolls in direct violence of the Constitution merely to implement the decision of a Governor to dissolve the Assembly, for that would be destroying the basis of the Constitution.

(3) The words used in Article 225, that the powers of a Provincial Assembly have to be exercised and the duties of such Assembly performed in the case of East Pakistan by " the Provincial Legislative Assembly for the Province of East Bengal functioning immediately before the Constitution Day ", and in the case of West Pakistan by " the Legislative Assembly of that Province consisting of persons elected thereto under section 11 of the Establishment of West Pakistan Act, 1955 ", establish the identity of persons who, subject to any casual vacancy being filled under clause (3) of that Article, are alone and to the exclusion of all others to exercise the powers and perform the duties of the Provincial Assembly.

(4) If the power to dissolve an interim Provincial Assembly vests in the Governor, a similar power will have to be conceded to the President in respect of the National Assembly functioning under Article 223.

(5) The words " until a Provincial Assembly for the Province . . . has been duly constituted under the provisions of the Constitution " indicate a *terminus ad quem* until which the interim Assembly is to exercise the powers and perform the duties of a Provincial Assembly, and, in the absence of words indicating that this period may be arrested or interrupted by the happening of some other event or contingency, the interim Assemblies must throughout the period perform the functions of a Provincial Assembly under the Constitution.

If in a provision of the Constitution a *terminus a quo* is given and the end of the period of time is also indicated by the word " until " then in the absence of words showing, expressly or by necessary implication, that the continuity of the period may be disturbed, the period continues until the happening of the event mentioned in the until-clause.

(6) Within its own terms, Article 225 does not contain the remotest suggestion that the Assemblies recognised by that article as Provincial Assemblies are liable to dissolution before the constitution of Provincial Assemblies under the provisions of the Constitution.

The very fact that, in the case of the continuance of the Legislative Assembly of West Pakistan as a Provincial Assembly of that Province, the framers of the Constitution deliberately departed from the language of section 11 of the Establishment of West Pakistan Act, which was undoubtedly before them because clause (2) of Article 225 expressly refers to it, must be taken to mean that until the new Assembly had been constituted the existing Assembly was intended to be indissoluble.

(7) While Article 225 provides by clause (3) the manner in which a casual vacancy occurring in a Provincial Assembly may be filled, it says nothing of how that Assembly is to be reconstituted for the interim period, if it were dissolved.

(8) Article 225 is not subject to Article 83 taken as a whole, rather Article 83 in respect of the Governor's power to dissolve is subject to Article 225.

The whole of Article 83 does not apply to interim Assemblies. That Article has to be read in its context, and when so read, it does not, by its own force, at all apply to temporary Provincial Assemblies.

When Article 83 states that the Governor may summon, prorogue or dissolve the Provincial Assembly, the reference is to the Assembly the composi-

tion of which is defined by Articles 77 and 78 of the Constitution, and this is apparent from clause (3) of that Article which fixes a term of five years for that Assembly. The temporary Assemblies functioning under clauses (1) and (2) of Article 225, however, are differently composed, were elected in a different manner and clearly do not have a five-year term. They are, therefore, not governed by Article 83 except to the extent that Article 225 itself provides. Thus Article 225 is essentially in the nature of a Proviso to the general provisions of the Constitution which relate to the composition and duration of future Provincial Assemblies.

The true rule of construction in such cases is that where there are two sections dealing with the same subject-matter, one section being unqualified and the other containing a qualification, effect must be given to the section containing the qualification. [Mass *v.* Elhpick (1910) 1 K. B. 465, 467 and Churchill *v.* Crease (1828) 5 Bing. 180.]

The Governor's power to summon or prorogue is a necessary incident to the exercise of powers and performance of duties by the Provincial Assembly, the power to dissolve is not.

It cannot be said that because the Governor has the power to dissolve a Provincial Assembly, that power must be capable of being exercised in respect of the temporary Assembly, the duration of which is fixed by the constitution in a manner which necessarily excludes the power to dissolve. On that construction of Articles 83 and 225 there can be no conflict between the two because, whereas the Governor has the general power to dissolve a Provincial Assembly, the exercise of that power is negated by a special provision which has operation for only a limited time.

Assuming for the sake of argument that there is a conflict between those two Articles, in that case Article 83 which is general must yield to Article 225 which is particular, on the maxim, *Generalia specialibus non derogant*, that is, if there be a conflict between a general provision and a particular or specific provision, the latter must override the former.

(9) It is not possible to conceive of dissolution without a fresh election being held.

But Article 141 was not intended to apply to the dissolution of the temporary Assemblies, and if that Article does not apply to such a situation and the Election Commission is not bound to hold general elections within six months of the dissolution of such Assemblies, there is no time limit in the Constitution within which the first National Assembly and the Provincial Assemblies have to be set up under the Constitution. And if that Article does not govern the situation arising from the dissolution of a temporary Assembly, such dissolution could not but lead to the establishment of a completely irresponsible Government by the President or Prime Minister at the Centre or by the Governor or the Chief Minister in a Province for an indefinite period, a Government which not only uproots the foundations of the Constitution but is also opposed to the Preamble which states, *inter alia*, that the new State is to exercise its powers and authority through the chosen representatives of the people. It was for this reason that Article 225 was worded as it is, and the Constituent Assembly considered it necessary to provide that until a new Provincial Assembly comes into existence, the Legislative Assembly of the Province existing on the day of the commencement of the Constitution was to continue to exercise the powers and perform the duties of the Provincial Assembly under the Constitution.

(10) Clause (3) and (4) of Article 230 read with Article 222 do not necessarily refer to the power to dissolve any of the temporary Assemblies.

(11) Indication that interim Assemblies are not liable to dissolution can be found also in clause (2) of Article 234.

Article 234 is a vital Article in the Constitution, and if it proceeds on the basis of the continued existence of the interim National Assembly throughout the transitional period, it would tend to show almost conclusively that

the Assembly is not liable to dissolution. And if dissolution of the interim National Assembly had been intended, there would have occurred in Article 234 some such provision as the proviso to clause (2) to Article 193. This being the position as regards the National Assembly set up under Article 223 of the Constitution, the case for the continued existence of the Provincial Assembly during the transitional period is *a fortiori* stronger because Article 225 enjoins the temporary Assemblies to perform the duties of Provincial Assemblies constituted under the Constitution and to exercise the powers of those Assemblies.

Clause (6) of Article 222 shows that the existing National Assembly is not liable to dissolution.

The full texts of the aforesaid two judgments are reported in:

(1) P.L.D. 1957 (W.P.) Karachi 387 (May, 1957, issue); and
(2) P.L.D. 1957 Supreme Court (Pakistan) 219 (September, 1957 issue).

(*Contributed by the Joint Secretary of the National Assembly.*)

Jamaica (Constitutional).—The Jamaica (Constitution) Order in Council, 1957 (S.I. 1957, No. 1744), dated 8th October 1957, provided for the formation of a Council of Ministers, ten being Members of the House of Representatives and two being Unofficial Members of the Legislative Council; one of the ten was to be styled Chief Minister, his name being submitted to the House by the Governor for approval before appointment. Other Ministers were to be appointed by the Governor on the recommendation of the Chief Minister. Provision was made for the appointment of the Chief Minister to be revoked by the Governor on a resolution to that effect being passed by the House, and for that of any other Minister to be so revoked on the recommendation of the Chief Minister. In the event of the absence or illness of any Minister, a temporary appointment might be made by the Governor. It was also provided that meetings of the Council of Ministers should be presided over by the Chief Minister, not the Governor, and that departmental responsibilities might be assigned to Ministers by the Governor on the recommendation of the Chief Minister, subject to the Governor's power to reserve certain categories of business, notably defence and external affairs.

The composition of the Legislative Council, changed in 1956 (see THE TABLE, Vol. XXV, p. 133), was further amended by reducing the number of *ex-officio* Members from three to one and increasing the minimum number of Unofficial Members from twelve to fourteen.

The Order in Council was published in the *Jamaica Gazette* on 15th October and brought into force by Governor's Proclamation on 11th November.

Kenya (Additional Elected Members).—The Kenya (Electoral Provisions) Order in Council, 1957 (S.I., 1957, No. 2220), which was made on 20th December, empowers the Kenya Legislative Council to make provision for the election of six additional African Members.

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

Mauritius (Proposed Constitutional Changes) (*see* THE TABLE, Vol. XXV, p. 135).—As a result of further discussions in London early in 1957 between a delegation from Mauritius and Ministers and officials of the Colonial Office and the Governor, it was agreed that a Ministerial form of Government should be introduced as soon as possible and before the next general elections which were due to be held in August, 1958.

According to the agreement reached (known in Mauritius as the London Agreement), the Executive Council was to consist of nine unofficial Members of the Legislative Council, to be appointed by the Governor, and the three *ex-officio* Members. Pending the enactment of new Constitutional Instruments giving effect to the agreement, it was decided that four of the nine unofficial Members would be elected by the Legislative Council in accordance with the method provided under the existing constitutional Instruments—*i.e.*, single transferable vote. Four Members were accordingly elected on 18th June, 1957, and the Governor subsequently announced that he had submitted for the instructions of Her Majesty the Queen, in accordance with the Royal Instructions, the names of five additional Members of the Legislative Council for appointment to the Executive Council. The Members of the new Executive Council, with ministerial status, are now responsible for the government of the Island.

As regards the system of voting, an Electoral Boundaries Commission was appointed by the Secretary of State for the Colonies in accordance with the London agreement. It consisted of Sir Malcolm Trustram Eve, Bt., G.B.E., M.C., T.D., Q.C., Mr. R. Beloe and Mr. E. R. Sudbury, C.B.E. At the end of the year the Report of the Commission was being awaited.

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

Nigeria (Constitutional Amendments).—The 1954 Federal Constitution of Nigeria, which was described in Vol. XXII (pp. 118-23), was amended during the course of 1957 by two Orders in Council.

The first of these, the Nigeria (Constitution) (Amendment) Order in Council (S.I. 1957, No. 1363) dated 31st July, dealt exclusively with Regional Executive Councils. The Governor was excluded from membership of the Eastern and Western Executive Councils, the Premier now normally presiding in each case and having sole authority to summon meetings of the Council. Provision was also made for the Governor of the Eastern and Western Regions to be supplied with all papers and information relating to the meetings of the respective Executive Councils.

Further changes were made by the Nigeria (Constitution) (Amendment No. 2) Order in Council (S.I. 1957, No. 1530), dated 23rd August. By s. 4 of this Order in Council (amending s. 6 of the 1954 Order), the three former *ex-officio* Members were excluded from membership of the House of Representatives. The former disqualification of holders of "any public office" was removed, the words

" any office of emolument under the Crown " being substituted (s. 6, amending s. 10). A similar amendment was made in respect of the Regional Houses of Assembly (s. 8, amending s. 39), and, in the Northern House of Assembly, the previous four Official Members were excluded from membership and the Attorney-General substituted (s. 7, amending s. 2)

Provision is made by s. 17 (inserting in the 1954 Order a new s. 66A) for bills to be introduced in the Legislative Assembly by message of the Governor-General.

The composition of the Council of Ministers of the Federation is changed by the disappearance of the three *ex-officio* Members and the removal of the regional qualifications for membership; it now consists of the Governor-General and not less than eleven other members, styled Ministers, appointed by him (s. 18, amending s. 88). Ministers are appointed, on the Prime Minister's recommendation, from among the Members of the House of Representatives, and it is specified that at least one shall be a Representative from the Southern Cameroons (s. 19, inserting a new s. 88A). The previously existing provision for declaration of temporary unfitness of a Minister by the Governor-General is revoked (s. 23, revoking s. 92). The Council of Ministers is presided over by the Governor-General or, in his absence, the Prime Minister (s. 25, amending s. 94), the latter being empowered to request the summoning of the Council (s. 26, amending s. 96). Ministerial portfolios are distributed by the Governor-General on the advice of the Prime Minister (s. 28, amending s. 98), but responsibility for external affairs, defence and police is vested permanently in the Governor-General, and for legal matters in the Attorney-General (s. 29, inserting new ss. 98A and 98B). Parliamentary Secretaries are to be appointed by the Governor-General on the Prime Minister's recommendation (s. 30, amending s. 99). The office of Secretary to the Governor-General and the Council of Ministers is abolished (s. 31, revoking s. 101). Provision is made for the temporary performance by another Minister of the functions of the Prime Minister in the event of the latter's illness or absence (s. 33, inserting new s. 102A).

While the composition of the Eastern and Western Region Executive Councils was left unchanged, that of the Northern Region was altered by the removal of the two *ex-officio* Members other than the Attorney-General, and the increase of the number of Regional Ministers from thirteen to a maximum of fourteen (s. 35, amending s. 106). In all Regions it is enjoined that the Governor shall appoint as Premier the person who appears to be the best able to command a majority in the House of Assembly and is willing to be so appointed (ss. 35, 37, 38, amending ss. 106, 109, 111). Provision is also made for the temporary performance of a Regional Premier's duties by another Minister in the event of illness or absence (s. 41, inserting new s. 123A).

Other amendments to the principal Order, which it is not necessary here to describe in detail, relate to the jurisdiction of courts, pensions to officers in the public service, and details of items on the Exclusive and Concurrent Legislative Lists.

Sierra Leone (Constitutional Amendments).—By the Sierra Leone (House of Representatives) Order in Council, 1956 (S.I. 1956, No. 1893), the former Legislative Council constituted under the Sierra Leone (Legislative Council) Order in Council, 1951, and consisting of 30 members with the Governor as President, has been replaced by a House of Representatives with a Speaker (in place of the Governor) and 57 members. The following are the main changes provided for in the 1956 Order:

Composition: s. 4 provides for a House of Representatives consisting of a Speaker, 4 *ex-officio* members (formerly 7), 51 elected members (formerly 21) and 2 (as formerly) nominated members.

The Speaker: shall not be an *ex-officio* member of the House, nor a Minister, nor a person who holds any public office. The House may, before the despatch of any other business at its first sitting after being constituted and at its first sitting after every dissolution, by resolution, in favour of which not less than two-thirds of the members vote, elect a person to be Speaker. If the House fails to elect a Speaker as aforesaid, the Governor shall in his discretion, by Instrument under the Public Seal, appoint a person to be Speaker (s. 5).

Ex-Officio Members: The 4 *ex-officio* members are the Chief Secretary, the Chief Commissioner of the Protectorate, the Attorney-General and the Financial Secretary (s. 8). In the former Legislative Council the Directors of Medical Services, Education and Agriculture also sat as *ex-officio* members.

It may be pertinent to observe that proposals for further constitutional changes now under consideration envisage that the present 4 *ex-officio* members will cease to be members of the House.

Elected Members: The 51 elected members comprise 37 members representing the Protectorate and 14 members representing the Colony area (s. 9). Of the 37 Protectorate members 12 are Paramount chiefs returned by indirect election through District Councils which serve as electoral colleges. All the other elected members are returned by direct elections under an enlarged franchise in which women have been accorded the right to vote.

Nominated Members: Their appointments are made by the Governor, according to his discretion, by Instrument under the Public Seal, and are to be reported by him forthwith to Her Majesty's Secretary of State for the Colonies (s. 10). Such appointments subsist during Her Majesty's pleasure.

Election of Members: Regulations for the conduct of elections to the House were made under the House of Representatives (Elections) Regulations, 1957 (Public Notice No. 38 of 1957). These regulations make provision for direct elections of members and for indirect elec-

tions of Paramount Chiefs to the House, and for the use of symbols by candidates standing for election (ss. 3, 14 and 50). S. 77 of the Regulations makes an offence the use of fetish, swearing or administering of any oath, and the beating of drums for the purpose of threatening anyone either to vote or to refrain from voting at an election.

Quorum: The quorum of the House is 20, compared with 10 in the previous Legislature (s. 26).

Voting: s. 27 provides as follows:

> Save as otherwise provided in this Order, all questions proposed for decision in the House shall be determined by a majority of the votes of the ex-officio and elected members present and voting.
> (2) The Speaker and any other person including the Deputy Speaker, when presiding in the House, shall have neither an original vote nor a casting vote.
> (3) The nominated Members shall have no vote.
> (4) If upon any question before the House, the votes shall be equally divided, the motion shall be declared lost.

In electing a Speaker or Deputy Speaker members of the House are to vote by secret ballot so as not to disclose how any particular member had voted (s. 7).

Disqualifications: An important amendment to that part of the above-mentioned Order which related to the disqualifications for membership of the House was made later in the same year by the Sierra Leone (House of Representatives) (Amendment) Order in Council, 1957 (S.I., 1957, No. 1532). Sec. 13 of the principal Order had read, in part, as follows:

> 13. No person shall be qualified to be elected as an Elected Member or appointed as a Nominated Member of the House who—
>
> . . . . . .
>
> (*c*) has been convicted of treason or has been convicted of felony or of any offence involving dishonesty and has been sentenced to imprisonment therefore without the option of a fine, and has not received a free pardon; or
> (*d*) being a person possessed of professional qualifications, has been or is disqualified (otherwise than at his own request) in any part of Her Majesty's dominions from practising his profession by the order of any competent authority made in respect of him personally; or

The amended provisions in S.I. No. 1532 delete the above paragraph (*d*) altogether and substitute for para. (*c*) the following:

> (*c*) is under sentence of death or is serving, or has within the immediately preceding five years completed the serving of a sentence of imprisonment (by whatever name called), without the option of a fine, of or exceeding twelve months imposed in any part of Her Majesty's dominions and has not received a free pardon; or

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

Tanganyika (Increase of Membership and inauguration of Ministerial system).—The Tanganyika (Legislative Council) (Amendment) Order in Council, 1957, dated 31st October (S.I., 1957), No.

1875, increased from nine to ten the number of constituencies, thus increasing by three the number of Nominated and Representative Members (to 34 and 33 respectively) (see also THE TABLE, Vol. XXIV, p. 152).

In accordance with the undertaking given by the Governor in his Address to the Council on 30th April (published by Government Printer) a Ministerial System was brought in, and also six Assistant Ministers were appointed (*Tanganyika Gazette*, Vol. XXXVIII, No. 43, p. 617).

2. General Parliamentary Usage

House of Commons (Private Notice Questions by Leader of Opposition).—On 10th December Mr. James Griffiths (Llanelly), the Deputy Leader of the Opposition (and at that time Acting Leader in the absence abroad of Mr. Gaitskell), drew attention in the House to the fact that Mr. Speaker had that day refused his consent to the asking by him of a private notice Question relating to the forthcoming Conference of the North Atlantic Treaty Organisation, on the ground that a question of similar purport had been asked and answered six days previously.

During the course of subsequent interchanges, in which it was suggested by several Members that a new situation had arisen of such a nature as to invalidate the original answer, Mr. Speaker intimated that if the question were rephrased in such a way as to adduce some changed circumstances, it might be acceptable (579 *Hans.*, cc. 1074-9). Such a rephrased question was in fact asked by private notice by Mr. Griffiths on the following day (*ibid.*, c. 1262).

This, however, was not the end of the matter; for on 18th December, Mr. Charles Pannell (Leeds, W.), at the end of Questions, raised a lengthy point of order in relation to it. In the first place, he alleged that the only difference of substance between the question first submitted by Mr. Griffiths and that ultimately accepted was the addition of the word "now". He then proceeded to make the following more general observations:

> There is no question that by custom, precedent and convention the Leader of the Opposition is deemed to be in a position different from that of all other Members of the House. He does not speak on behalf of himself. He does not normally put Questions on the Notice Paper. He asks Questions by Private Notice on matters which he, as Leader of the Opposition, considers are urgent or important to the Opposition itself.
>
> I am fortified in thinking this by what happened in 1945. The Right Hon. Gentleman the Member for Woodford (Sir W. Churchill) was then Leader of the Opposition and he used the procedure of the Private Notice Question and in so doing came under some fire from this the party then on the other side of the House. Mr. Speaker Clifton Brown ruled:
>
> > "It is not the custom for the Leader of the Opposition to put Questions on the Order Paper. The only way in which he can put a Question is by Private Notice."—[Official Report, 30th October, 1945; Vol. 415, c. 242.]

Two days later Mr. Speaker Clifton Brown again said:

> "It is the custom of this House for the Leader of the Opposition not to ask many Questions but to ask those which are of an urgent important character, and he never puts a Question on the Order Paper but puts it by Private Notice."—[Official Report, 1st November, 1945; Vol. 415, c. 629.]

I could cite many other cases but you, Mr. Speaker, will know the sort of examples to which I am referring. I have been through these precedents, but one does not need to go back any further than 1945, and before and since then a convention seems to have grown that the Leader of the Opposition, speaking on behalf of half of the House, has a status different from that of any other Member of the House. This has grown by custom, practice and convention. . . .

This custom and precedent which were extended to the Right Hon. Gentleman the Member for Woodford did not disappear when he ceased to be Leader of the Opposition, and I think I speak for many of my hon. Friends when I say that there a degree of affront was felt on this side of the House the other day. We felt that the Leader of the Opposition, or his deputy, in his absence, was not allowed to put a view which was strongly held on this side of the House.

Mr. Speaker replied:

The question which is really put to me was how far I could refuse to accept a Private Notice Question from the Leader of the Opposition. The matter is really quite simple. Past Speakers have ruled that it is the custom in this House for the Leader of the Opposition not to ask any Questions but to ask those which are of an urgent, important character, and that he never puts a Question on the Order Paper but puts it by Private Notice. I accept that. That is the custom of the House. Indeed, the factor of urgency is not, in practice, insisted on in the case of the Leader of the Opposition.

The hon. Member will see in Erskine May, page 362 of the latest edition, that—

> "Questions which are asked without appearing on the paper are governed by the same rules of order as questions of which notice has been given."

Some, though not all, of these rules are listed in May, pages 358 to 360 under the title, "Examples of inadmissible questions." For instance, paragraph (26) says:

> "Repeating in substance Questions already answered or to which an answer has been refused."

He then went on to demonstrate that there had been in fact a much greater difference in substance between the two drafts of Mr. Griffiths' question than Mr. Pannell had alleged. He concluded his ruling as follows:

I would like to say this. A less strict view is, by custom, taken of Private Notice Questions from the Leader of the Opposition just because it is not customary for him to put any other kind of Question. It is less strict in that urgency is not insisted on. The factor of importance is left to the right hon. Member himself to decide. In other words, these two factors, which result in many Private Notice Questions being disallowed for ordinary Members, are not applied in the case of the Leader of the Opposition. He is himself supposed to be the judge of the importance of the matter, and the Speaker accepts his view on the subject. Neither is it necessary for him to show

urgency, as it is in the case of an ordinary Member, who has an opportunity to put a Question on the Order Paper, because the right hon. Member does not put Questions on the Order Paper. So these two factors are waived but, beyond that, all the other ordinary rules apply. I am bound by the rules and I am bound to apply them.

The Hon. Member for Leeds, West (Mr. C. Pannell) mentioned that he had not been able to find any precedent on this matter. That is natural because what happens in my office, and between myself and the hon. Member who seeks to put a Private Notice Question, is not recorded in Hansard or in the Journals of the House, and does not appear anywhere else, so precedents on it are not easy to find.

If I may say what sometimes happens, it is that if I do not think that the Question is sufficiently urgent to warrant it being dealt with by Private Notice, and there is a convenient opportunity for it to be answered in the ordinary way—as in the case of ordinary Members putting Questions on the Order Paper—I ask the hon. Member concerned to put it on the Order Paper.

It can be phrased in another way which will not transgress the rules. I sometimes suggest to the hon. Member how he can get over the difficulty of the rules of order if I think that the Question, on its merits, deserves to be given the priority of a Private Notice Question. But when a Question is flatly against one of the rules of the House, as this one was, I am bound by the rules. There is nothing I can do. I hope that I have succeeded in clearing up the matter and that the House will acquit me of any desire to affront either the right hon. Member or any other section of opinion in the House. (580 *Hans.*, cc. 428-34).

House of Commons (Photoprints of Parliamentary Papers).—On 5th July, in a written reply to a question, the Financial Secretary to the Treasury (Mr. Enoch Powell) stated that one photoprint copy of an out-of-print Act or other Parliamentary paper, required by a Member for the discharge of his parliamentary duties, would be made available free of charge on application to the Vote Office. Where the Act or paper exceeded ten pages, the copy could only be supplied when the Member making application stated that his requirement could not be met by the loan of a free copy from the Stationery Office or by reference to a copy in the Library (572 *Hans.*, c. 152).

Jersey (Pecuniary Interest of Members).—On 14th February, Standing Orders (No. 3773) were adopted by the States laying upon Members the duty of declaring their interest, being an interest "immediate and personal and not merely of a general or remote character", in any matter submitted to the Assembly or under consideration by any of its Committees, and forbidding them to vote on such a matter. All such declarations were to be recorded in the Minutes of the States or the Committee, as the case may be.

For the purpose of the order, the interest of one spouse, if known to the other, is deemed to be also an interest of the other.

Australian Commonwealth (Changes in Sessional Periods and Conduct of Business).—On 19th March the Leader of the House of Representatives, the Rt. Hon. H. E. Holt, M.P., made a statement setting out some details of the arrangements proposed for the parliamentary year, and proposed changes in the conduct of the business of Parliament, particularly in relation to the House of Rep-

resentatives (H. R. *Hans.*, pp. 18-23). The arrangements and changes were decided upon after consultation with the Presiding Officers, the Cabinet, the Deputy Leader of the Opposition and members of the Government Parties. Particulars of the new arrangements were given as follows:

1. A new Session of the Parliament would be commenced each year, beginning with a formal opening in the autumn and concluding towards the close of the year at the end of the budget sessional period. (Past sessional periods in the Commonwealth Parliament have been most irregular and have ranged in length from a few weeks to the entire length of the Parliament—three years.)
2. Normally in each session there would be two periods of sittings —the first so timed as to permit four or five weeks of parliamentary discussion before an Easter recess of about two weeks duration. The sittings would then continue until the end of May, or early June, to be followed by a further period of sittings lasting from August to November. (Sittings during the months of June and July have always been avoided as far as possible due to the relatively cold and unpleasant nature of Canberra's weather during this time.)
3. As a general rule, legislation of a non-financial character, including amending and consolidating legislation, would be brought forward in the autumn session, allowing more time later in the year for the consideration of the Estimates and the financial measures arising out of the budget.
4. An effort would be made to increase the attendance of Ministers and Members in the Chamber. The Leader of the House stressed the need for this in the following words:

> It has been my own feeling for some time, and I believe that it is shared by many honourable members, that the quality of debate, the significance of the private member and the institution of Parliament are all impaired if attendances are scanty during the sittings of the House.

In order to accomplish this the business of Cabinet and subcommittees of Cabinet, the holding of party meetings and the meetings of committees of the Parliament, would be arranged, as far as practicable, at times when the business of the Parliament was not in progress. (The usual meeting times for the Senate and the House of Representatives are in the afternoon of Tuesday and Wednesday and the morning of Thursday. It has been the general rule for party meetings to be held on Wednesday morning. Tuesday mornings are not popular for committee meetings as most members are *en route* to Canberra at this time. Much use is made, for Committee purposes, of the dinner adjournment from 6 p.m. to 8 p.m.)

5. The membership of those House Committees which are appointed for the duration of a sessional period only and require re-appointment at the beginning of a new session would remain as constant as possible so that members, normally chosen by parties after an election has taken place, would serve on the Committees for the life of the Parliament.
6. Following the speeches and the adoption of a motion of condolence relating to the death of a member, the customary adjournment of the House, as a mark of respect, for the remainder of the sitting would be replaced by a suspension for a period of about one hour. (This innovation has saved much valuable parliamentary time. In recent cases the House has suspended its sitting until the resumption of business after the dinner adjournment—a period of about an hour and a half.)
7. The rising of the House on the first sitting day (Tuesday—when Members are somewhat tired after travelling to Canberra) should be about 10.30 p.m. with no discussion on the motion for the adjournment. The sitting would be terminated about 10.30 p.m. on Wednesday and an adjournment debate of approximately one hour would be allowed. The House would rise about 11.00 p.m. on the third and final sitting day of the week after a period of debate on the adjournment, if required, of about half an hour. The reason for this change, as stated by Mr. Holt, was—

> I have been convinced that proceedings at night have dragged on to a point at which they have interfered with the satisfactory performance of the next day's business.

The new arrangements as outlined by the Leader of the House, have, generally speaking, worked well and have helped the smooth working of the Parliament. The yearly sessions have helped the House officers in the compilation and binding of Votes, Papers and indexes.

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

Nyasaland (Dress of Strangers).—By an Order made on 7th May (Government Notice No. 68) under the Legislative Council (Powers and Privileges) Ordinance (see p. 147), the President enjoined (*a*) that no man might enter the precincts while the Council was sitting unless cleanly and neatly dressed and wearing a jacket with either long trousers or shorts and stockings, and a tie; and (*b*) that no woman might enter the precincts wearing shorts or trousers of any description.

Singapore (Languages in Legislative Assembly Debates).—On 9th February, 1956 (that is, in the First Session of the Assembly), the Assembly passed the following resolution:

> That for the purposes of oral debate the languages of the Assembly should be English, Malay, Mandarin and Tamil; and that a Select Committee be appointed to examine, report upon and make recommendations in respect of

matters necessary to enable effect to be given to the proposal. (L.A. *Hans.*, Vol. I, c. 1543).

The Select Committee so appointed was, however, unable to complete its investigations before the end of the session, and it reported accordingly to the Assembly on 30th May, 1956.

A fresh Select Committee was set up, during the course of the Second Session (August, 1956/January, 1958) on 6th December, 1956, pursuant to the following resolution:

That a Select Committee comprising Mr. Speaker as Chairman and thirteen members to be nominated by the Committee of Selection be appointed to examine, report upon and make recommendations in respect of matters necessary to enable effect to be given to the resolution of the Assembly on 9th February, 1956, that for the purposes of oral debate the languages of the Assembly should be English, Malay, Mandarin and Tamil and that the Report from the Select Committee on Languages in Legislative Assembly Debates in the previous Session, as contained in Sessional Paper No. L.A. 7 of 1956, be referred to this Select Committee. (L.A. *Hans.*, Vol. 2, cc. 1171-3).

The Report of the Select Committee (Sessional Paper No. L.A. 20 of 1957) was presented on October 24, 1957. A summary of their recommendations appears on pages 7-8 of the Report. The principal of these are (1) that there should be oral translations of all speeches from any one language into all the other three languages, and (2) that oral translation of all speeches should be by means of a system of simultaneous or near-simultaneous oral translation referred to as the "relay system" and that equipment to give effect to the relay system be installed.

A large number of the other recommendations deal with the requirements and facilities in respect of equipment, recruitment and training of interpreters. One of them recommends the establishment of a Central Bureau of Interpreters and Translators, while two others deal with proposed amendments to the Standing Orders to cope with the introduction of multilingual interpretation of Assembly debates. The effects of the proposed amendments are as follows:

(*a*) an Assemblyman having commenced to speak in one language would be required to continue in that language for that particular speech;

(*b*) a Minister or Member-in-charge of a matter would be permitted to use any or all of the four languages in reply to matters raised in a debate; and

(*c*) if the relay system failed to function satisfactorily or should there be inadequate facilities for simultaneous oral translation, the Speaker would be empowered to require—

(i) that an Assemblyman who desires to speak in Malay, Mandarin or Tamil should provide an English translation of any prepared speech and hand same to the interpreter prior to delivery of his speech;

(ii) that an Assemblyman who desires to speak in Malay, Mandarin or Tamil should hand to the interpreter a copy of his speech from which the interpreter could deliver a prepared English translation or an English translation at sight;

(iii) that an Assemblyman who intends to deliver a speech of importance should prepare a summary of his speech and hand copies of the summary to the interpreters for translation into all the other three languages after he has completed his speech;

(iv) that an Assemblyman should speak in a language in which he is known to be proficient.

The Report has not been debated in the Assembly since its presentation. Up to date there is no indication as to when multilingual interpretation of Assembly Debates will be introduced.

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

3. Privilege

House of Lords: Committee for Privileges.—On the 19th February the Lords altered their Standing Order concerning the Committee for Privileges after considering a Report from the Select Committee on Procedure of the House (H. L. 16 of 1956). Since 1732 the Committee for Privileges had consisted of "all the Lords who come", and the Committee had ordinarily sat in the House. Since the celebrated Wensleydale case in 1856, however, the Committee for Privileges had seldom, or never, assembled in full, and had in fact only sat in very small numbers in a committee room to consider claims of peerage. In view, however, of the possibility that points of privilege might arise as a result of the appointment of life Peers and Peeresses, and of other developments such as the granting of Leave of Absence (both of which will be described in the next volume of THE TABLE), it was thought advisable to reconstitute the Committee for Privileges in a more convenient and workmanlike form. The new Standing Order also contained a formal statement of the practice that had obtained since the nineteenth century that at least three Law Lords must sit in the Committee on any claim of peerage. The text of the present Standing Order (No. 65) is as follows:

Committee for Privileges. 19 Feb., 1957.

A Committee for Privileges shall be appointed at the beginning of every session; sixteen Lords shall be named of the Committee, together with any four Lords of Appeal; in any claim of peerage, the Committee shall not sit unless three Lords of Appeal be present.

Pursuant to Standing Order No. 54, the Chairman of Committees presides over the Committee for Privileges unless the House otherwise directs.

Nyasaland (Powers and Privileges).—On 13th February the Governor gave his assent to the Legislative Council (Powers and Privileges) Ordinance 1957 (No. 4 of 1957), passed by the Council on 9th February.

Like its counterparts in other colonial legislatures (see—*e.g.*, THE TABLE, Vol. XXV, p. 147) it secures freedom of speech in the Council, confers on the President power to regulate admission to the precincts, empowers the calling of witnesses and lays down their duties and privileges, and sets forth a list of contempts against the Council. Such contempts are made offences under the penal code, and appropriate fines or periods of imprisonment are provided in respect of them. No prosecution for an offence under the Ordinance may be instituted except with the written sanction of the Attorney-General.

S. 29(1) lays down that where the President, under any provision of the Standing Orders, rules that words used by a Member are out of order, he may, at his absolute discretion, order that the words, or any words out of which they arose or arising out of them, shall not be published in any manner; a penalty is laid down for any such publication.

4. THE CHAIR

Nyasaland (Appointment of Speaker).—On 20th August additional Royal Instructions were issued (Government Notice No. 108 of 1957) giving formal power to the Governor to appoint a Speaker to be Vice-President of the Legislative Council (the Governor remaining President, but not taking the Chair except on formal occasions).

On 18th January, 1958, the Governor appointed Mr. Henry Wilcox Wilson, Q.C., B.A., LL.B., to be Speaker, and Mr. Wilson first presided over a meeting of the Council on 10th February, 1958.

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

5. ORDER

House of Commons (sub judice rule not applicable to disciplinary proceedings of Bar Council) (*see also* THE TABLE, Vol. XXIII, pp. 64-7).—On 7th June the Home Secretary (Mr. R. A. Butler), during the course of a statement on the interception of telephone communications, observed that disciplinary proceedings by the Bar Council against a certain barrister (whose telephone had been tapped) were pending, and that the matter was to that extent *sub judice*. Mr. Silverman (Nelson and Colne) observing that this was a "professional, domestic inquiry by a professional body into the professional conduct of one of its members", asked Mr. Speaker in what way the matter was *sub judice* as far as the House was concerned. Mr. Speaker replied:

The strict meaning of the words *sub judice* I have always understood to be that the case is before the constituted courts of justice. I should not like to give that as a final opinion, but it is what I have always understood and in response to the hon. Member for Nelson and Colne I express that opinion. But with regard to the tribunal of which I have heard today, I think it may be that it is not within the terms of *sub judice* as hitherto applied. I would say, however, and I think that the House will agree, that it might be undesirable to prejudice any case which is being considered, even by such a tribunal. That is a matter of opinion, and although the narrow construction of the words is as I have said, yet the inadvisability of prejudging issues which are to be considered by other bodies applies to some extent in both cases. (571 *Hans.*, cc. 1565-7).

Ceylon: House of Representatives (Employment of Police to remove a Member from the Chamber).—On 19th June Mr. Speaker found it necessary to name a Member for disorderly conduct in the Chamber and, after an appropriate Motion had been moved by the Prime Minister, it was resolved by the House that the Member should be suspended.

In accordance with this Resolution, Mr. Speaker requested the Member concerned to leave the Chamber, which he refused to do, stating that he would like to be taken out by force. Persuasion having failed, Mr. Speaker reported to the House that the Member refused to obey his orders and that he had to order the Serjeant-at-Arms to remove him. Thereafter, he suspended the Sitting of the House for ten minutes to enable the Member to be removed (28 *Hans.*, cc. 359-60).

The Serjeant-at-Arms, having unsuccessfully endeavoured to persuade the Member to leave the Chamber, called in the members of the Police Force in attendance on the House, and requested them to remove the Member by force. The Member was carried out of the Chamber in his chair and was deposited on the pavement outside the precincts of the House.

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

Pakistan (Expunging from Proceedings of unparliamentary words and phrases).—On 30th August, on a motion of Mr. Y. A. Haroon, the National Assembly set up a Committee, under the Chairmanship of Mr. Speaker—

> to examine and expunge words and phrases considered unparliamentary, if any, in the Proceedings of the Assembly during the three sessions of this year.

In their Report, dated 8th March, 1958, the Committee stated that they had addressed letters to various authorities to ascertain the practice regarding expunging from the official records of Parliament. One of these, Sir Edward Fellowes (Clerk of the House of Commons) had replied as follows:

> No words or expressions are allowed to be expunged from Hansard, and, therefore, your third point does not arise. It is true to say that from time to time the entries in the Journal have been expunged by order of the House, but these are acts and not words. Hansard is an official record of what is said, whether such remarks were unparliamentary or not and, of course, the

Speaker has no power to prevent the Press from reporting what is actually said.

The Committee's Report concluded as follows:

Article 55 of the Constitution lays down that "the procedure of the National Assembly shall be regulated by Rules of Procedure framed by the Assembly", and the old Rule 126 (corresponding to the present Rule 145 of the National Assembly of Pakistan Rules of Procedure and Conduct of Business) provides:

> "Where any question has arisen in the Assembly for which no provision exists in the rules, the Speaker shall follow the practice of the House of Commons of Parliament of the United Kingdom of Great Britain and Northern Ireland *mutatis mutandis* in so far as it is not inconsistent with these rules."

In view of the reply received from the Clerk of the House of Commons, London, the Committee is of opinion that the matter should be referred back to the National Assembly for the purpose of obtaining a direction whether it should proceed with the work of expunging or not.

6. PROCEDURE

House of Commons (Mr. Speaker's discretion on Adjournment Motions under S.O. No. 9: Censure motion).—On 22nd July, in response to a private notice question, the Secretary of State for Foreign Affairs (Mr. Selwyn Lloyd) informed the House that Her Majesty's government had agreed to give military assistance to the Sultan of Muscat and Oman against an insurrection by the former Imam of Oman, in view of the fact that the dissidents had clearly received assistance from outside the Sultan's territories. He said that small-scale precautionary movements of our forces had already taken place, and that he would keep the House informed of further developments.

After some supplementary questions had been asked and answered, Mr. Benn (Bristol, South-East) sought leave to move the Adjournment under S.O. No. 9 on—

a definite matter of urgent public importance, namely, the decision of Her Majesty's Government to offer British military assistance to the Sultan of Muscat and Oman.

Mr. Speaker replied that the submission must fail on the ground of urgency, since he understood that there were not at present any British troops in Muscat, and the House was not in possession of any facts which would entitle him to regard the matter as urgent.

Mr. Benn and one or two other Members endeavoured to pursue the matter on the ground of urgency, but Mr. Speaker drew attention to the following words in the Foreign Secretary's statement:

The local British authorities are considering with him [the Sultan] the best form that this [the aid] might take. They have been given discretion within certain limits to take military action.

He considered that the Standing Order could not be invoked until more was known about the limits which had been placed on the dis-

cretion. In the second place, he observed that if Mr. Benn considered that the action contravened any treaty, that was a legal matter which he should argue at the proper time. There were, moreover, in the near future, various other opportunities (in Supply and on the Appropriation Bill) of debating the matter.

Further submissions were made, but Mr. Speaker, while conceding that further information from the Foreign Secretary on a future day might alter the whole situation, adhered to his ruling. (574 *Hans.*, cc. 32-40.)

A further statement was made the following day, and a number of supplementary questions were answered; Mr. Speaker then declined to call any more questioners, observing that the matter could be further pursued in the debate (on the Foreign Office vote) that was to follow in committee of Supply. Mr. Benn then formally gave notice that he was proposing to table a motion regretting Mr. Speaker's action in ruling as he had done the previous day. (*Ibid.*, cc. 234-5).

On 29th July Mr. Benn accordingly moved—

> That this House is of the opinion that the statement made by the Secretary of State for Foreign Affairs on 22nd July, in which he announced that the British authorities in Muscat and Oman had been given discretion, within certain limits, to take military action, constituted a definite matter of urgent public importance under Standing Order No. 9, and regrets that Mr. Speaker did not rule to that effect.

He made it clear that his motion was intended as "a motion of censure on one act, but not a motion of no confidence in the Chair or the present occupant of the Chair", and that he proposed to withdraw it at the end of the debate.

In describing the historical origins of the procedure, Mr. Benn observed that when the Standing Order had been introduced in 1882 Mr. Speaker had said that the construction which he would put on the words "definite matter of urgent public importance" would be—

> that the question of urgency should rest not with the Speaker, but with the Member desiring to bring the question forward. (3 *Parl. Deb.* 274, c. 1448).

Since that time, however, the Standing Order had been constantly reinterpreted, and the leading references to the definitions which had been made by succeeding Speakers now filled six pages of Erskine May (16th Ed., pp. 369-74).

Turning to the ruling which Mr. Speaker had given, he questioned it on three grounds. First, he claimed that although the Foreign Secretary's statement had not been very informative, part of the object of debate was to bring pressure on the Government to turn a situation which was uncertain into one of greater certainty, and that if a decision to commit troops was in itself not urgent, it was questionable whether anything could be urgent. Second, he felt that legal complications did not reduce urgency but might indeed underline it. Third, turning to what he described as the "Supply Day argument", he observed that the subjects of debate on Supply days

were outside the control of back-bench Members, and that none of the subjects which had in fact been allotted would have lent themselves to a discussion of military action in Oman. The Ruling therefore only made sense if addressed to a party leader who could change the business on a Supply day if he chose. He summarised his argument thus:

> What happened, Mr. Speaker, was that you gave a Ruling which was a remedy for my party but not a remedy for me. You may very well say, "What right have you to choose?" The answer is that I have not a right to choose in this matter unless it is urgent, definite and of public importance; and then I claim under Standing Order No. 9 I have the right to choose on one condition, and that is that I have the support of 40 hon. Members of this House. I do not know whether they would have risen in their places. They might not have done. My grumble and complaint is that they were not given a chance.

Several speeches followed, in support of or opposition to the motion; the opposition being perhaps voiced in its most extreme form by Mr. Godfrey Nicholson (Farnham), who said—

> I believe it is bad for this House and bad for Parliamentary tradition when the utter impartiality of the Chair—I am not talking about the infallibility of the Chair—and the dignity of the Chair are questioned. For that reason, I deeply regret the Motion that has been moved.
>
> I go further. I very much regret whenever any hon. Member—myself or anybody else—argues with you, Mr. Speaker, on any Ruling. When I first came to the House in the days of Mr. Speaker Fitzroy, when a Motion for the Adjournment of the House under Standing Order No. 9 was moved, no argument or discussion was permitted. Owing to his kindness of heart, Mr. Speaker Clifton-Brown began to permit argument with him over his rulings on those Motions. I venture humbly to suggest to you, Mr. Speaker, that the time has now come when, having given your decision, you should stand by it and should not permit argument or discussion.

Intervening in the debate, the Leader of the House (Mr. R. A. Butler), disputed Mr. Benn's contention regarding the practical impossibility of debating the matter on a Supply day, on the ground that on the day after the ruling had been given, the Foreign Office vote was down for discussion, on which the matter could certainly have been raised; the fact that it had been agreed to address the debate on that vote to the question of disarmament would not have prevented it. The Leader of the Opposition (Mr. Gaitskell), who spoke next, did not explicitly dissent from anything which Mr. Butler had said, although he expressed disagreement with Mr. Nicholson's suggestion and deplored the fact that the government had thought fit to issue a three-line whip for the debate.

After some further speeches Mr. Benn, in accordance with his undertaking, withdrew his motion. (*Ibid.*, cc. 878-909.)

House of Commons (Questions to Ministers: Answering of several at once).—On 25th February, when the Minister of Pensions (Mr. Boyd-Carpenter) had offered to answer together four questions which stood on the paper, one of the questioners, Mr. Arthur Lewis (West

Ham, North) objected on the grounds that his question differed in substance from the others; he was, however, informed by Mr. Speaker that he should await the answer to the question before criticising it. (565 *Hans.*, c. 839.)

A further ruling in a similar sense was given on 28th March, on which occasion Mr. Speaker also made it clear that he did not consider that all Members whose questions were answered in an "omnibus reply" were entitled as of right to ask supplementary questions. He was accordingly asked by Mr. J. Griffiths (Llanelly) to give a considered ruling on these matters. (567 *Hans.*, cc. 1341-3.)

Mr. Speaker's considered ruling was given on 4th April, as follows:

First, in reply to the point raised by the hon. Member for Cardiff, South-East (Mr. Callaghan), which was whether every Member whose Question is so answered has the right to ask a supplementary question, I have no doubt that no such right exists. The difficulty lies in attempting to reconcile the rights of the individual Member with the rights of other Members and of the House as a whole. No hard and fast rule for effecting this reconciliation has ever been propounded. As in other cases where a similar conflict arises, the House has left the solution to the judgment of the Speaker. This judgment I must continue to exercise to the best of my ability until the House otherwise orders.

The Questions which gave rise to the point of order all related to tests of atomic weapons and the Bermuda Talks. On this occasion the Prime Minister had four times stated that he preferred to answer these Questions in his speech opening the forthcoming debate. In these circumstances, it seemed to me better to give another Member the chance of asking a Question on another subject rather than have another repetition of the same Answer.

The second point was raised by the right hon. member for Llanelly, who asked whether a Member had the right to object to his Question being answered with others. On this, I see no reason to depart from my previous Ruling of 25th February of this year, that it is unreasonable for an hon. Member to object to an Answer which he has not yet heard. The alternative seems to me to involve a waste of the time of the House, since the Answer has already been drafted and will merely be repeated.

If the hon. Member asking the Question can subsequently show that his Question, or any part of it, has not been covered, the Question, or the relevant part of it, can again be put on the Order Paper; and I can remember many occasions on which that has been done. But to insist on an Answer being repeated a number of times seems to me an abuse of the limited time for Questions. I hope that in the general interest of Members with Questions on the Order Paper, and, indeed, in the interest of the speedy and regular transaction of its business, the House will support me in this view. (568 *Hans.*, cc. 583-4).

Union of South Africa: Senate (Notice of Questions and motions).—S.O. No. 49 formerly provided that notice of both questions and motions in the Senate should be read aloud and then delivered to the Table at least one day before that on which they were to be asked or moved.

An amendment to the Standing Order, adopted on 21st February, retained the same procedure in respect of motions but provided that questions should normally be handed in in writing to the Clerk not later than 3 p.m. on the day before that proposed for bringing on the

question; the duty was laid upon the Clerk of arranging such questions on the paper in the order in which they were received. Notice of a question may still, however, be given orally, but only if the consent of the President is previously obtained.

India: Rajya Sabha ("Flash Voting").—On 12th August, by order of the Chairman (Notification No. RS-13/3/57-L), rule 214 of the Rules of Procedure and Conduct of Business in the Council of States was amended to enable a Division to be held by means of the Automatic Vote Recorder installed in the Chamber.

(*Contributed by the Secretary of the Rajya Sabha.*)

Northern Rhodesia (Divisions).—On 13th November, a day on which private Members' motions had precedence over public business in accordance with Standing Orders, there were several motions on constitutional matters on the Order Paper in the name of one Member. As each motion was moved and seconded, amendments were moved which virtually contradicted the original motions; and the Member called for a division three times on the first motion, first on the question that the words proposed to be left out be left out; then on the question that the words proposed to be substituted be substituted; and again on the motion as amended. (93 N.R. *Hans.*, c. 307.)

On the second motion he called for divisions twice more. In all these divisions he was in a minority of one. When he had caused a division, in respect of the second motion, on the question that the words proposed to be left out be left out, Mr. Speaker intervened to enquire whether he did "sincerely and honestly challenge the accuracy" of his decision. Mr. Speaker was referring by implication to Standing Order No. 58, which reads, "If the opinion of Mr. Speaker as to the decision of a question is challenged, a division shall take place." (*Ibid.*, cc. 326-7.)

The point was whether the Member, having already called for a division twice in connection with the same motion and having been in a minority of one in each case—and the voices on the third question having clearly indicated that he was still in a minority of one—could in the terms of the Standing Order challenge the correctness of Mr. Speaker's assessment of the voices. The Member did, in fact, withdraw his call for a division on the third question upon the second motion. (*Ibid.*, c. 329.)

On the following day Mr. Speaker gave a considered ruling on the point. Among other things he stated that—

> the important thing is that there should be no doubt as to whether the Ayes or the Noes really have it and the slightest suspicion of a doubt in the mind of a Member, even if only caused by wishful thinking, would justify his challenging the opinion (*i.e.*, of the Speaker).

He said that the Speaker would not refuse a division because of a suspicion that the challenger's doubt was not genuine; but if he had certain knowledge as in the case under consideration, he must take

cognisance of it and protect the House against the abuse of its rules. (*Ibid.*, cc. 386-7.)

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

7. Committees

Tasmania: Legislative Council (Powers of Joint Committees).—The Parliamentary Privilege Act, 1858, was amended by Act No. 79 of 1957 (Governor's Assent, 6th December) to give a Joint Committee of both Houses all the powers of a Select Committee of either House.

The amending Act also gives protection from a defamation charge to a witness in respect to his evidence before a Joint Committee, as is the case of a witness to a Select Committee. Prior to 1957, the statutes and standing orders had specified the powers and privileges in this respect of a Select Committee, and doubt existed as to whether a Joint Committee's position in a court of law was identical.

Persons may now be punished for contempt of a Joint Committee, as has been the case in the past in relation to a Select Committee.

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

8. Standing Orders

India: Lok Sabha (Amendments to Standing Orders).—Some further amendments were made to the Fourth Edition of the Rules of Procedure and Conduct of Business in Lok Sabha.

All the amendments, with the exception of one, were of verbal or drafting nature. The exception was the insertion of a new rule 319A which specifically provided that any business pending before a Parliamentary Committee did not lapse by reason only of the prorogation of the House and that the Parliamentary Committee continued to function notwithstanding such prorogation.

The rules contained in the Fourth Edition of the Rules of Procedure and Conduct of Business in Lok Sabha and as amended from time to time, were approved by Lok Sabha under Article 118(1) of the Constitution on 22nd December, 1956.

New Edition brought out: In accordance with the decision of the House, the Fifth Edition of the Rules of Procedure and Conduct of Business in Lok Sabha was brought out and laid on the Table on 28th March, 1957.

Amendment to the Fifth Edition: Rule 272 of the Fifth Edition was substituted by a new rule on the 12th September, 1957 (Bulletin Part II, para. 606; Lok Sabha Notification No. 783-CI/57, dated 13th September, 1957, published in the *Gazette of India*, Part I, Section I, Extraordinary, dated 13th September, 1957). Formerly it was obligatory on a Parliamentary Committee to take all evidence on oath. The effect of the substituted rule is that it is now discretionary with a Parliamentary Committee whether or not to administer

oath or affirmation to a witness. Some verbal changes have also been made in the form of oath/affirmation laid down in the rule.

(*Contributed by the Secretary of the Lok Sabha.*)

Bombay (Amendments to Rules of both Houses).—After the commencement of the Constitution of India, the Legislative Council and Assembly Rules which were already in force were modified and adapted by the Chairman and Speaker by virtue of the powers conferred on them by Article 208(2) of the Constitution, and the rules so modified and adapted were published in *Bombay Government Gazette*, Part IV-A, dated 14th and 17th February, 1950. By notifications issued on the 19th and 29th September, 1950, the Chairman of the Council further amended the Rules under which Part XII-A (now Part XV)—Questions of Privilege—and rule 119-E (now rule 140)—Appropriation Bill—were added to the rules. Subsequently, Committees were appointed by the Assembly in July, 1952, and the Council in August, 1952, to frame Rules under Article 208(1) of the Constitution of India, and the rules as finally adopted by both Houses were published in *Bombay Government Gazette*, Part IV-A, dated the 30th April, 1953.

After the reorganisation of States on 1st November, 1956 (*see* THE TABLE, Vol. XXV, pp. 76-82), the Speaker, in exercise of the powers conferred upon him by s. 32 of the States Reorganisation Act, made certain changes in the Rules of the Assembly with a view to increasing the membership of the Public Accounts Committee and the Estimates Committee. On 24th July, 1957, the Chairman appointed a Committee of 12 members and the Speaker a Committee of 21 to recommend any adaptations or modifications that the rules may require. The Committees, after studying the rules of the various State Legislative Councils and Assemblies, and also taking into consideration the rules of the Lok Sabha and Rajya Sabha, each unanimously recommended some changes to be made in the Rules. The Chairman and Speaker accepted those recommendations, and incorporated them in the Rules, acting under the powers vested in them by Section 39 of the States Reorganisation Act, 1956. The said changes were duly notified in the *Bombay Government Gazette* Extraordinary on 7th and 10th December, 1957 (Nos. 132 and 134), and 15th January, 1958 (No. 9).

It may be of interest to state here briefly some of the salient features of the changes introduced in the Rules. With regard to resolutions, the new Rules provide for a wider definition in both Houses of the term "Resolution" and for balloting for determining priority each time they are set down for discussion. The procedure on questions is also changed so as to secure their more expeditious disposal. The new Rules provide for the constitution of three new Committees in each House—viz., the Rules Committee, the Business Advisory Committee and the Committee on Private Members' Bills and Resolutions, and also for a Committee on Subordinate Legisla-

tion in the Assembly. The Rules further provide for representation of the Council on the Assembly Committee on Subordinate Legislation and two Financial Committees—viz., the Public Accounts Committee and the Estimates Committee. New Parliamentary devices such as discussion for short duration on matters of urgent public importance and calling attention to matters of such nature on the lines of Lok Sabha Rules have also been incorporated in the new Rules.

(*Contributed by the Secretary to the Legislature Department.*)

Madhya Pradesh: Vidhan Sabha (Amendments to Rules).—A number of amendments were made by Mr. Speaker during 1957 to the Assembly's rules, in exercise of the powers conferred by s. 32 of the States Reorganisation Act (*see* THE TABLE, Vol. XXV, p. 163); the most important are listed below. The amendment to Rule 52 was made on 23rd February (Order No. 814), the remainder on 9th July (Order No. 5689).

Business Advisory Committee: By amendments to Rules 27, 28 and 29, power was given to the Committee to make recommendations concerning business other than Government bills, and for other functions to be assigned to it from time to time by the Speaker.

Questions: Under Rule 52, all questions not fully answered on the due date owing to the fact that the required information has not been received must be laid on the Table on the opening day of the next session. An added proviso to the Rule now dispenses with the necessity for this procedure after a dissolution.

General Purposes Committee: By a new Rule 231, a Committee of this name was set up to "consider and advise on such matters concerning the affairs of the House as may be referred to it by the Speaker from time to time". It consists of not more than fourteen Members nominated by the Speaker, with the latter as *ex-officio Chairman.*

Expunction of Words: A new Rule 231 provides that the Speaker may order the expunction from the proceedings of the House of any words used in debate which in his opinion are indecent or contain offensive expressions about either House of the Central Parliament, any State Legislature or any Member of any such body.

Mysore: Legislative Assembly (Amendments to Rules of Procedure).—Provision was made during 1957 by the Speaker under s. 32 of the States Reorganisation Act, 1956, for the constitution of a Business Advisory Committee (Rules 23A to 23G) (Notification No. 10783-L.A. dated 23rd to 26th August) and a Joint House Committee (Rule 175) (Notification No. 10734-L.A. dated 23rd-26th August). The strength of membership of the Privileges Committee has been increased to nine (Rule 171) (Notification No. 10439-L.A. dated 6th August). By the same Notification, the Finance Minister is also excluded from the membership of the Public Accounts Committee (Rule 134 (2)).

(*Contributed by the Secretary to the Legislature.*)

Pakistan (Revision of Rules of Procedure).—The National Assembly of Pakistan, in pursuance of Sub-clause (*a*) of Clause (I) of Article 55 of the Constitution of Pakistan, at its meeting held on 9th October, 1956, set up a Committee to draft the Rules of Procedure of the National Assembly.

The Committee held its first meeting on the 10th November, 1956, and appointed a sub-committee consisting of three Members to prepare a draft of the Rules of Procedure and Conduct of Business for the consideration of the Committee.

The Committee, after having considered the report of the sub-Committee and the Rules of Procedure and Standing Orders of the British House of Commons and of the Parliaments of other Commonwealth Countries and the Congress of the United States of America, as well as having taken into account the existing Rules of Procedure and Conduct of Business in East and West Pakistan Assemblies, introduced a number of new rules in order to bring the old rules in line with the practice and procedure of these institutions. The report of the Rules of Procedure Drafting Committee (National Assembly) was presented to the National Assembly on 5th January, 1958. The Rules were finally adopted by the Assembly on the 8th January, 1958. The provisions of the Standing Orders have been incorporated in the Rules.

Much of the work of revision consisted of rearrangement and regrouping of the existing Rules into chapters, but there were a number of changes of substance. Definite days of meeting were laid down (Mondays to Fridays), and the ordinary conclusion of the sitting was fixed for 8 p.m. (new Rule 14); business other than Government business was given precedence on Fridays (Rule 24). Considerable additions were made to the list of reasons for inadmissibility of Questions (Rule 37). The period of notice of motion for leave to introduce bills was reduced from one month to fifteen days (Rule 52(4)), and the period in respect of notice of resolutions from fifteen to seven days (Rule 91). The previous limit of fifteen days allotted for the discussion of demands for grants was relaxed, the number now being fixed by Mr. Speaker in consultation with the Leader of the House (Rule 111). A special procedure was laid down for the amendment of the Rules (Rule 120), the rule of anticipation was introduced (Rule 126), and a detailed procedure was laid down for voting (Schedule III). New sections were added relating to Committees of the whole House (Chapter IX (B)), the Committee on Estimates (Chapter XIII (B)), Privilege (Chapter XVI) and general rules relating to Committees (Chapter XVII).

(*Contributed by the Secretary of the National Assembly.*)

West Pakistan (Amendments to Rules of Procedure).—The following amendments to the Rules of Procedure were made during 1957:

Sittings of the Assembly: Power to vary the usual days of sitting,

formerly vested in the Assembly itself, was conferred on the Speaker. A provision enjoining the Assembly to meet on a Sunday or public holiday if so ordered by the Governor in writing was deleted (*W.P. Gazette* (Extraordinary), 28th January, 1957, p. 291).

Appropriation Bill: Provision was made for days to be allotted by the Governor for the introduction and consideration of Appropriation and Supplementary Appropriation Bills; on such days no other business, apart from questions, might be taken (*ibid.*). A further amendment provided for the Speaker to put the question on such bills forthwith on the last of the allotted days half an hour before the normal hour of interruption. (*Ibid.*, 7th February, 1957, p. 323.)

Nyasaland (Amendment of Standing Orders).—On 6th of May the Legislative Council made a number of amendments to the Standing Orders (Government Notice No. 67, dated 16th May). The great majority of these were consequential upon the replacement of the Governor by a Speaker as normal occupant of the Chair (see p. 147), but the following amendments of substance were also included:

Meeting of a new Council: By an amendment to S.O. 5, Members of a new Council are sworn (by the Speaker) before, instead of after, the arrival of the Governor.

Papers: Amendments to S.O. 15 provide that an Order Paper shall be prepared for each sitting day and not, as heretofore, in calendar form on the first day of each meeting. The necessity of confirming the minutes of the previous sitting is dispensed with in S.O. 16; and the words "Votes and Proceedings" are substituted for "minutes" throughout the Standing Orders.

Voting: By the provisions of the former S.O. 62 a division could be taken at the request of any Member; a new S.O. 62A now provides that the decision lies with the Speaker or Chairman, who may refuse to call a division unnecessarily claimed.

A new S.O. 65A gives a casting vote to the President or Speaker, if either is presiding; neither, however, has an original vote. Any other Member who may be in the Chair at a sitting of the Council or a Committee has an original vote and, in the event of equality, a casting vote as well.

Order: S.O. 130 lays down, and S.O. 73, as amended, confirms, that disorder in Committee of the whole Council may be censured only by the Council on receiving a report thereof; nevertheless, the powers of Chairmen of Committees have been strengthened in this regard by amendments to S.O.s 81, 82, 83 and 85. As previously drafted these Standing Orders (which concerned suspension after naming, time during which members may be suspended, withdrawal of suspended members from the precincts and the adjournment or suspension of a sitting owing to grave disorder), could only be applied during the sittings of the Council itself. As amended, however, they can be put into force by Chairmen of Committees while the Committee is still sitting; in such a case, a suspended member is sus-

pended "from the service of the Committee". It is not made explicit whether a Member who has been suspended from the service of a Committee of the whole Council is *eo ipso* suspended, for the same period, from the service of the Council itself or from Committees of the whole Council set up to consider different matters, although it seems likely that his suspension would be so interpreted. Nor is it explained whether, if a sitting of such a committee is adjourned or suspended owing to grave disorder, the Council itself can meet later in the day or during the period of suspension, as the case may be, although, here again, it might be held that suspension of a Committee of the whole Council implied suspension of the Council itself.

Kenya: Revised Standing Orders.—Revised Standing Orders were framed and proposed by the Governor on 7th October, under Article XXIV of the Royal Instruction dated 29th March, 1934. They were laid on the Table on 8th October (LXXIII Kenya *Hans.*, c. 2), and agreed to by the Council on 9th October (*ibid.*, c. 40). The following innovations may be of interest to readers.

Pecuniary Interest.—References in the old Standing Orders limiting the actions of Members by reason of pecuniary interest have been omitted. The value of these limitations was brought out when the Council was debating the Liquor Licensing Bill in 1956 when both producers and consumers claimed pecuniary interest more as a right than as a duty.

The Committee in submitting the new Standing Orders made the following observations:

> We expect that as a matter of conscience and convention Members will when speaking to a matter in which they have a material private interest declare the nature of such interest.

Responsibility for Statements of Facts.—Standing Order 60 provides that—

> A Member shall be responsible for the accuracy of any facts which he alleges to be true and may be required to substantiate any such facts or to withdraw his allegation.

On 12th November, 1957, this Standing Order was invoked in the course of debate, when a Member made certain accusations against unnamed District Commissioners, which he was not prepared to substantiate (LXXIV *Hans.*, cc. 669-71). In a personal statement on 19th November, the Member withdrew the allegations which he had made (*ibid.*, c. 853).

Closure of Debate.—Standing Order 64 provides that a debate may be brought to a close by a Member rising in his place and claiming to move "That the Mover be now called upon to reply". Though not unique, this form is rare, but is inserted to enable a debate to be properly wound up. Hitherto Members had been inhibited from moving the closure because they wanted to have the reply. This

Standing Order was successfully invoked on 21st November. (*Ibid.*, c. 1010.)

Limitation of Debate.—Standing Order 64 reads as follows:

(1) The Council may, on a Motion made in accordance with the provisions of this Standing Order, impose a limit in respect of the debate on any particular Motion by allotting a limited period of time for such debate or by limiting the time during which Members may speak in such debate or by imposing both such limitations.

(2) No such Motion shall be made except by a member of the Sessional Committee and on the direction of that committee.

(3) Such Motion may be made without notice:

Provided that such Motion shall not be made in the course of the debate to which it refers unless it is moved after an adjournment of such debate and before the debate is resumed.

This Standing Order was prepared as a result of the following reports of a sub-committee of the Sessional Committee set up to make recommendations on the possibilities of limiting the time spent on any particular Motion.

It was agreed that no general limitations on debate, which might have the effect of precluding elected members from speaking when they wished for political reasons to do so, was desirable.

It was further agreed, however, that it was desirable that there should at least be some limitation on the length of speeches in " cross-country " and other long debates.

It was further agreed that the nature and extent of limitation, whether by way of block allocation of time for a debate or by way of a time limit on individual speeches, or both, should be decided *ad hoc*, and on a motion in the House, in relation to each debate which the Sessional Committee considered it desirable to limit.

This Standing Order was brought into use on 12th November, in the debate of the Second Reading of the Personal Tax Bill, which the Chief Secretary (Mr. Turnbull) moved be restricted to two days. (*Ibid.*, cc. 661-2.)

In moving this Motion the Chief Secretary suggested that it might be possible to adopt the convention where hon. Members who were selected by their various groups to wind up on behalf of those groups should arrange to speak in some mutually agreed order; and that they should be the last speakers from the other side of the Council, and that if the winding-up process from the other side of the Council was not completed by a given time, it would be necessary to move under Standing Order No. 64 that the Mover be now called upon to reply.

The debate in fact concluded well within the limited time and it was therefore not necessary to adopt the conventions proposed by the Chief Secretary.

Amendments to Bills in Committee.—Standing Order 90(2) provides as follows:

No amendment shall be moved to any part of a Bill by any Member in charge of the Bill, unless written notification thereof shall have been given

to the Clerk before the commencement of the sitting at which that part of the Bill is considered in Committee.

The application of this Standing Order has given rise to difficulties where it is proposed to amend an amendment moved by the Member in charge of the Bill. Although the principle upon which this particular Order is based is generally accepted, there is a likelihood that an amendment may be introduced to make it possible to take amendments of this nature. Examples of the difficulties that might otherwise recur are to be found in the Official Record of the Debates on 13th and 19th November. (*Ibid.*, cc. 762, 859-64.)

General.—There are of course many other modifications of the previous Standing Orders, but those to which attention has been brought are the only ones which may be said to bring in departures from the Standing Orders which may be found in other parts of the Commonwealth.

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

Singapore (Amendments to Standing Orders).—A revised edition of Standing Orders (as mentioned in THE TABLE, Vol. XXV, pp. 167-8) came into force on 1st January. Later in the year, further amendments were recommended by the Standing Orders Committee in a report published as Sessional Paper No. L.A. 13 of 1957. The proposed amendments were adopted by the Legislative Assembly on 16th October, and became effective from 1st November, 1957 (*Hans.*, Vol. 2, No. 38, 1957, cc. 2718-9). The effects of the amendments are summarised below:

(1) *Sittings of the Assembly.*—S.O. No. 7 (6) was amended so as to provide that at the moment of interruption (4.00 p.m.) the remaining items of business on the Order Paper shall automatically stand over until the next sitting day, unless the Member in charge should name to the Clerk, at any time prior to the termination of the sitting, a different day.

Amendments made to S.O. No. 7 (11) had the following effect:

(i) A motion for exempting the proceedings of any specified business from the provisions of Standing Order 7 may be made by a Minister, without notice, at any time between 3 p.m. and 3.30 p.m.

(ii) Notwithstanding the passing of a resolution exempting the proceedings on any specified business from the moment of interruption (at 4 p.m.)—

(*a*) if such exempted business were completed before the moment of interruption (at 4 p.m.), the Assembly could then proceed to deal with any other business on the Order Paper;

(*b*) if a Member has obtained the right to raise a

matter on the motion for the adjournment, and if such exempted business is disposed of after 4 p.m., a debate on the motion for the adjournment shall take place for half an hour immediately after the conclusion of the exempted business.

(2) *Manner of Asking and Answering Questions.*—Formerly only Ministers could give replies to questions. An amendment to S.O. No. 16 now makes it possible for others, such as Assistant Ministers and other Members, to reply.

(3) *Divisions.*—As a result of amendments made to S.O. No. 43, division bells are rung for two minutes instead of for one minute. The silence of one minute, provided for in the past, is done away with.

(4) *Procedure in Committee of the whole Assembly on a Bill.*—S.O. No. 51 was so amended as to provide that amendments to Bills other than to Urgent Bills now require two clear days' notice. In the past no notice was required.

(5) *Proceedings on Bills reported from Select Committee.*—By amendment to S.O. No. 55 (3), a Bill reported from a Select Committee shall stand recommitted to a Committee of the whole Assembly without question put when a motion for recommittal has been moved and seconded.

(6) *Urgent Bills.*—Amendments to S.O. No. 59 enable a Bill which has already been introduced to be proceeded with throughout all its stages if the reason for urgency has become apparent after its introduction.

(7) *Reports from Select Committees.*—The length of notice for a motion to adopt a report of a Select Committee is increased by an amendment to S.O. No. 65 (5) from two to seven clear days.

(8) *Appropriation Bill: Committee of Supply.*—An amendment to S.O. 69 (2) removes the necessity for seconding the motion for the second reading of the Appropriation Bill.

Amendments to paragraph (4) of the same Standing Order empower the Speaker to specify the time at which the consideration of each head of expenditure in the Schedules to the Bill and of the clauses of the Bill shall be concluded.

A new paragraph (4A) of Standing Order 69 provides that on any day allotted for the Committee of Supply and so long as the business of Supply has not been completed, no other business shall be taken between 10.30 a.m. and 4 p.m.; and that the business of Supply should not be taken after 4 p.m. except under the provisions of Standing Order No. 17 (Adjournment—Definite matter of urgent public importance) or unless the Assembly otherwise orders.

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

9. Financial Procedure

Australian Commonwealth (Supplementary Estimates: Change in Procedure).—Under the provisions of the Audit Act of the Commonwealth (s. 36A), expenditure in excess of a specific appropriation or not specifically provided for in the annual Appropriation Acts may be paid out of a sum appropriated each year under the heading of "Advance to the Treasurer".

Prior to the year 1957-58 this item bore a notation:

> To enable the Treasurer to make advances which will be recovered within the financial year and also to meet expenditure particulars of which will afterwards be included in a Parliamentary Appropriation.

Past practice was for the amounts expended under this Vote to be included in Supplementary Estimates which were submitted to the Parliament for consideration after the close of the financial year to which they related. Upon agreeing to these Estimates the House then proceeded to pass a Supplementary Appropriation Bill embodying the amounts listed in the Estimates.

In 1956, when the Public Accounts Committee was examining the form in which Supplementary Estimates should be submitted to the Parliament, the Committee was advised by the Treasury, the Parliamentary Draftsman and others, that the practice of including the expenditure from the Treasurer's Advance in a supplementary estimate was legally unnecessary as well as ineffective. The argument put to the Committee was that since the advance had already been appropriated when the Annual Estimates were passed, there was nothing to be gained, legally or otherwise, by again appropriating details of the expenditure.

By section 83 of our Constitution, no money can be drawn from the Treasury except under appropriation made by law. When the Parliament in the main Appropriation Act appropriates a sum for the purposes of the Treasurer's advance, all constitutional needs have been satisfied. There is no constitutional requirement that the money should be appropriated a second time.

In considering this question the Committee was conscious of the need to preserve the rights of the Parliament to be informed of the manner in which the Treasurer had spent the advance voted to him. The Committee finally decided that a satisfactory procedure would be for the Treasurer to submit as soon as possible within the following financial year a statement of the allocations of the expenditure authorised by him from the advance, and also to move a resolution seeking the approval of Parliament for those allocations. The Committee undertook to report on each statement of allocations as early as possible and, if it could be done, by the date on which the Treasurer tabled it.

These recommendations of the Committee, contained in its Thirty-

first Report (Parl. Paper No. 13 of Sess. 1957-58), were given effect to when the House was presented with a Statement of Expenditure for the year 1956-57 on 9th October, 1957 (V. and P. No. 41, p. 203; H.R. *Hans.*, pp. 1172-4). As contemplated by the Committee, prior to the presentation of the Treasurer's Statement, the Report of the Public Accounts Committee dealing with the payments from the Treasurer's Advance was presented to the House (Parl. Paper No. 39 of Sess. 1957-58).

To provide the House with an opportunity of being informed of the new procedure and, if necessary, discussing it and expressing an opinion on it, the Prime Minister, prior to presenting the Statement on 9th October, moved the following motion:

> That the House approves that, in lieu of the presentation of Supplementary Estimates and the introduction of Supplementary Appropriation Bills, the following procedure be adopted:
>
> (1) That there be presented to the House after the end of each financial year a Statement prepared by the Treasurer showing the Heads of Expenditure and the Amounts charged thereto pursuant to Section 36A of the Audit Act 1901-1957.
> (2) That the Statement be referred for the consideration of the Committee of the whole House.
> (3) That a Resolution of the Committee be reported to the House for its adoption.

The Prime Minister, on moving the motion, explained that the Government believed that the recommendation of the Committee, although it represented a departure from the procedures in the past (the old procedure had been in operation since Federation), was an improvement.

On 5th December (V. and P. No. 62, pp. 332-3), the new procedure was debated and agreed to. The Statement of Expenditure was then referred to the Committee of the Whole House, debated and agreed to. The following Resolution was thereupon reported to the House and adopted—

> That the Committee agrees with the Statement for the year 1956-57 of Heads of Expenditure and the Amounts charged thereto pursuant to Section 36A of the Audit Act 1907-1957.

The Statement of Expenditure was dealt with similarly in the Senate on 5th December, 1957 (Journals No. 54, pp. 185, 189; Sen. *Hans.*, pp. 1748, 1786-7).

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

Sierra Leone (Supplementary Votes Committee).—A new Standing Rule 34A was agreed to by the House of Representatives on 15th July (H.R. Minutes, 15th July, 1957, p. 19), to provide for a Supplementary Votes Committee analogous to the Standing Committee on Finance in other Legislatures. The Committee is nominated by the Speaker and consists of a Chairman (the Financial Secretary) and twenty other Members, of whom not more than three may be Min-

isters. Its duty is to consider proposals for expenditure on new services not provided for in Annual or Supplementary Appropriation Ordinances, or expenditure in excess of the provisions of such ordinances; it has no power to impose a charge or vary the incidence of taxation without the sanction of the Governor.

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

10. BILLS, PETITIONS, ETC.

House of Commons (Oral presentation of Public Petitions).—In Session 1956-57, during the course of the passage of a Bill for decontrolling rents, a large number of petitions against the Bill were presented orally in the House; several of the Members who presented them required the Clerk of the House, under the provisions of Standing Order No. 92, to read the petitions *in extenso* (*e.g.*, 566 *Hans.*, 505; 568 *Hans.*, 935, 1102, 1269, 1890; 569 *Hans.*, 335). On 9th April, after the Clerk had been directed to read a petition, Major Legge-Bourke (Isle of Ely) expressed doubt whether the original intention of the Standing Order was being fulfilled, and asked whether Mr. Speaker would be prepared to accept a more fully prepared statement on the matter. Mr. Speaker replied:

> I remember, when the hon. Member for Oxford University—as he then was—Sir Alan Herbert, presented a petition and desired it to be read, my predecessor, Mr. Speaker Clifton Brown, said that it was entirely at the option of the hon. Member whether the petition should be read or not. He added some remarks to the effect that he hoped the practice would not be indulged in too often, as, of course, it shortened the time available for Members' Questions. (568 *Hans.*, cc. 935-6).

On 6th June, Sir Alfred Bossom (Maidstone) presented a petition asking for an early and substantial reduction of the duty on port wine, which the Clerk was directed to read. Points of order were then raised: first, by Mr. Shinwell (Easington) that it was undesirable that this procedure should be used with regard to a petition representing a limited, sectional interest only, and second, by Mr. Paget (Northampton), that Petitions ought not to be presented on days when the Prime Minister was answering Questions, since the time available for Questions was thereby cut down. Mr. Speaker replied:

> With regard to the question of the right hon. Member for Easington I fear that I have no power in the matter to prevent a Petition, which is in proper form according to the practice of the House, from being presented by an hon. Member.
>
> In reply to the hon. and learned Member for Northampton I have previously expressed the hope that hon. Members presenting Petitions will not insist on their undoubted right to have the Petition read, because all that time comes off Questions. I can only express a desire and a hope. I am powerless to do more. (571 *Hans.*, c. 1435).

House of Commons (Competence of House to receive petitions on which no action can be taken).—On 9th April, three petitions were

presented against the Rent Bill, at that time pending in the Lords. Rising to a point of order, Sir Peter Agnew (Worcestershire, S.) observed that the Bill had received its third reading in the Commons, and that therefore, in the event of no amendment being made by the Lords, no further action on it would be possible in the Commons. Mr. Speaker replied:

> The same thought occurred to me. I have had researches made and I find that on 4th November, 1909, after the Finance Bill of that year, a matter of some controversy, received its Third Reading, a Petition was allowed by the Speaker in similar terms *mutatis mutandis* against the Bill. So, in the absence of any Ruling to the contrary and with that precedent of an affirmative character, I felt bound to allow these Petitions. (568 *Hans.*, c. 937).

Western Australia (Amendment of Regulations and Bye-laws).—An amendment to the Interpretation Act in 1957 makes provision for Parliament to amend or vary a regulation which has been published under the authority of an Act, or to substitute another regulation for one disallowed.

Prior to this amendment the Act only covered disallowance. Its provisions were that, when by any Act regulations could be made, regulations so made must be laid before each House within six sitting days next following publication in the *Gazette*, and further, that if either House passes a resolution disallowing the regulation such regulation ceases to have effect; a limit of fourteen days being given for notice of disallowance after tabling.

As a consequence of this Act, amendments were made to the Standing Orders of the Legislative Council (Amendment No. 5 (1957)).

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

Northern Rhodesia (Resumption of bills lapsed on prorogation).—On 27th March Mr. Speaker brought up a report of the Standing Orders Committee recommending the adoption of a new Standing Order, and stated that unless notice of objection was received by a certain date, the report would be considered as adopted. (91 N. Rhod. *Hans.*, c. 587.) No such objection was received.

The new Standing Order is numbered 116A, and provides that a public bill whose progress has been interrupted by prorogation (but not by dissolution) may be revived in the following session by a resolution of the Council. Such a revived bill would be proceeded with at the commencement of the stage which it had reached during the previous session, unless the resolution provided otherwise.

Nigeria: Eastern House of Assembly (All stages of a Bill taken the same day).—On 18th November, on the Second Reading of the Education (Amendment) Bill, an opposition Member drew attention to the provisions of S.O. No. 43 to the effect that—

> At the conclusion of the proceedings on the first reading or on any subsequent stage of a Bill, a day to be named by the Member in charge of the Bill shall be appointed for the next stage: provided that with the general consent of the House all the stages of a Bill may be taken the same day.

Announcing that the Opposition were against the Committee Stage being taken the same day, he asked for a ruling on the interpretation of the words " general consent ".

Mr. Speaker replied:

In so far as it is necessary to obtain the general consent of the House to take all the stages of the Bill on the same day, I am of the view that in the case of a Government Bill where a Minister proposes to take all the stages on the same day the general consent can be assumed, and it is unnecessary to put a question on the issue especially where Government majority is as large as it is here. Furthermore, general consent here does not mean general consent without a dissentient voice and this is not the first time in this House that Government Bills have been so treated. It would stultify proceedings if an Opposition Member by merely stating that he is opposed to all the stages being taken on the same day is enabled to delay Government business. (Eastern H.A. *Hans.*, 18th Novembr, 1957, cc. 48-9.)

11. ELECTORAL

Pakistan (Election declared void on petition).—Dr. Khan Saheb was elected in pursuance of Rule 13 of the " Rules for the Election of Members " published as schedule to Constituent Assembly Order, 1955 (G.G.'s Order No. 12 of 1955) from the Baluchistan constituency. The electoral College consisted of the Quetta Municipal Committee, among others. The petitioner, Mr. M. Akbar, prayed to the West Pakistan High Court, Karachi Bench, to issue a writ of Quo Warranto declaring the alleged election of Dr. Khan Saheb to the Constituent Assembly as null and void and to declare the seat of the representative of former Baluchistan as vacant. The ground for challenging the election was that the Electoral College responsible for the election of Dr. Khan Saheb, of which the Quetta Municipal Committee was a part, was not legally constituted. On 25th March the High Court allowed the writ on the following grounds:

That Article 223 does not cure the illegality of the election of the member of the Constituent Assembly. Such an absurdity cannot be contemplated. The whole object of Article 223 was to transform the body functioning as Constituent Assembly into a National Assembly by the Constitution. The Article was not concerned with the legal position of any individual member of the Constituent Assembly. He would become the member of the National Assembly provided he was a duly elected member of the Constituent Assembly.

That the High Court would not ordinarily interfere where any remedy which is equally convenient is open to the petitioner but the existence of another remedy is not in every case a bar to the exercise of the powers of a High Court under Article 170 and the Court can and should interfere if the circumstances of the case justify such interference.

Further, that section 9, Constituent Assembly Proceedings and Privileges Act, 1955, did not lay down as to who should file an election petition. As only a voter or a candidate may question the legality of an election by an election petition, a third person may have recourse to a petition under Article 170 of the Constitution for a writ of Quo Warranto, if a public office is held by a person not legally entitled to it.

The principle to be observed is that, where an election has taken place but irregularities have been committed in the course of that election, remedy

by way of election petition is the only remedy available, but if there is no election at all in the eye of law then Election Tribunal is not the only forum.

Where a component part of the electoral College, prescribed by clause 4(3), Constituent Assembly Order (XII of 1955), namely, non-official members of Quetta Municipality, was not in existence, the Municipality having been superseded at the moment, the election was set aside on a writ petition by a member of the public.

(*Contributed by the Joint Secretary of the National Assembly.*)

Pakistan (System of Elections).—Article 145 of the Constitution empowers Parliament to provide for the principle of electorate in elections to the National and Provincial Assemblies after it has ascertained and considered the views of the Provincial Assemblies. The Provincial Assemblies of West and East Pakistan having expressed their views, a Bill was passed by the National Assembly in October, 1956 (Electorate Act, 1956: XXXVI of 1956), providing for elections on the basis of the system of joint electorate in East Pakistan and separate electorate in West Pakistan.

In April, 1957, the Act of 1956 was amended by the Electorate (Amendment) Act, 1957 (XIX of 1957), so as to apply the principle of joint electorate throughout the country. The legislation was designed not only to remove the great complexities that would have attended the task of delimitation of constituencies if the principle of separate electorate were retained, but also to introduce a single principle avoiding divisions. Subsequently in August, 1957, the National Assembly passed the Electorate (Second Amendment) Act, 1957 (XXXVI of 1957), amending the preamble of the Electorate Act, 1956.

(*Contributed by the Secretary of the National Assembly.*)

Southern Rhodesia: Legislative Assembly (Franchise).—Two important changes in the electoral system of Southern Rhodesia were made by the Electoral Amendment Act, 1957 (Act 38 of 1957), which made provision, *inter alia*, for a new category of voter (being referred to generally as a "special voter") and for votes to be cast on the "preferential system".

The main object of the amendments relating to the qualification for the vote has been stated to be to ensure that "government should remain in the hands of civilised and responsible people". While the fundamental principles of a common voters' roll and a non-racial franchise have been maintained, the qualifications required have been tightened up.

Qualifications.—The provisions relating to the special voter are temporary, for when the total number of such voters on the rolls equals 20 per cent. of the total number of ordinary voters, a proportion of one in six of all voters, these provisions will expire and no more special voters will be registered. Those special voters registered at that time will remain on the rolls as ordinary voters, but persons seeking registration thereafter will have to satisfy the more exacting requirements laid down for ordinary voters.

To be entitled to be enrolled, a person must—

(i) be a Southern Rhodesian or Federal citizen;
(ii) be 21 years of age or over;
(iii) have the necessary residence qualification;
(iv) have the necessary educational and means qualifications; and
(v) not be disqualified.

A claimant must have an adequate knowledge of the English language and be able, in his own handwriting, to complete and sign the prescribed claim form. In addition, he must possess one or other of the educational and means qualifications as set out below. In order to enable a comparison to be made between the new and old qualifications, where this can conveniently be done in a brief tabulated schedule, the latter are shown in brackets.

ORDINARY VOTER

Means Qualification	*Additional Educational Qualification*
I. Income, salary or wages not less than £720(240) per annum during each of the 2 years (3 months) preceding date of claim or owning immovable property within the Colony of value of not less than £1,500 (£500)	(No change)
or	
II. Income, salary or wages of not less than £480 (£240) per annum during each of the 2 years (3 months) immediately preceding date of claim or owning immovable property in Colony valued at not less than £1,000 (£500)	Completion of course of primary education of prescribed standard (ability to speak and write in English)
or	
III. Income, salary or wages of not less than £300 (£240) per annum during each of the 3 years (3 months) immediately preceding date of claim or owning immovable property in Colony valued at not less than £500 (£500)	Completion of course of not less than four years secondary education of prescribed standard

SPECIAL VOTER: LIMITED ENROLMENT OF PERSONS WITH CERTAIN LOWER QUALIFICATIONS

Adequate knowledge of English language, ability to complete in own writing and sign the prescribed claim form, and citizenship, age and residence qualifications as above set out, and also

Means Qualification	*Education Qualification*
I. Income, salary or wages of not less than £240 (£240) per annum during each of 2 years (3 months) preceding date of claim for enrolment	As above
or	
II. Income, salary or wages of not less than £120 (£240) per annum during each of 2 years (3 months) preceding date of claim for enrolment	Two years secondary education of prescribed standard

Provision is made for determining, at intervals of 3 years, the purchasing power of money in comparison with the purchasing power of money when the measure was passed or for thus increasing or decreasing the means qualifications specified. The expression "adequate knowledge of the English language" is defined and provision is made for the appointment of a Board to determine the standards of primary and secondary education in other countries to be accepted as equivalent to such standards in the Colony, and to decide whether a standard of primary or secondary education mentioned in any claim form is of a prescribed standard.

Persons registered as special voters do not qualify to stand for a seat in Parliament (s. 17).

Preferential system of voting.—Under the former system of conducting a ballot, a voter was required to place a cross on the ballot paper in the rectangle opposite the name of the name of the candidate for whom he wished to vote. In future, he must place the figure 1 or a cross in the rectangle opposite the name of the candidate for whom he votes as his first preference and *may* give contingent votes for all or any of the other candidates by placing the figures 2, 3, 4 (and so on) in the rectangles opposite their names to indicate the order of his preference. He is, however, it will be noted, not obliged to indicate any more than his first preference, in which respect this system differs from the more common system of preferential voting.

In the case of two candidates, the one with the greater number of first preference votes is declared elected.

In the case of three or more candidates, the candidate who has received the greatest number of first preference votes is declared elected, if that number constitutes an absolute majority of votes. If no candidate has received an absolute majority of first preference votes, the candidate who has received the fewest first preference votes is excluded and each ballot paper counted to him is counted to the candidate next in order of his preference. If no candidate then has an absolute majority of votes, the process of excluding the one who has fewest and counting his ballot papers to the unexcluded candidate next in his order of preference is repeated, until one candidate receives an absolute majority of votes.

"Absolute majority" is defined as a greater number than one half of the whole number of ballot papers included in the counting (s. 22).

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

Kenya (Result of election not vitiated by irregularities committed by Returning Officer).—On 6th November, 1956, Mr. Justice A. G. Forbes, of the Supreme Court of Kenya, was appointed (by *Gazette* Notice No. 3042 of 1956) a Commissioner to inquire into and report on an application to set aside the election of Mr. W. B. Havelock as Member of the Legislative Council for the Kiambu area.

The application had been made on the grounds (*a*) that the Re-

turning Officer had failed to produce unopened all envelopes containing ballot papers received by him before the close of the poll, and to open such envelopes in the presence of a Presiding or Deputy Presiding Officer; (*b*) that he had failed to compare the signatures of the voters on the postal ballot papers with those on their respective applications for postal ballot papers, and to allow the Presiding or Deputy Presiding Officer to inspect such signatures; and (*c*) that the Presiding Officer of the Polling Station at Dandora had left the Station empty for a certain period, with the counterfoils, official stamp and ballot box unattended. The Commissioner was further directed to report on whether these irregularities, if established, had effected the result of the election.

The proceedings before Mr. Justice Forbes began on 23rd November and continued, either in Chambers or in public, on six further days, the last being 18th December. In his report to the Governor ("Report of the Commissioner into the Conduct of the Kiambu Election, 1956"; unnumbered Government Publication), dated 4th January, the learned Judge found that most of the allegations were established. The returning officer had not produced the envelopes unopened at the count of the poll, but had opened them immediately the poll was closed; this he had done in the presence of the Temporary District Officer, Kiambu, but not (as would have been the case had the rules been observed) of the candidates and their agents. Second, the envelopes had not been opened in the presence of the Presiding or Deputy Presiding Officer, since, through an oversight, the Temporary District Officer, Kiambu, had not been properly appointed Deputy Presiding Officer, although it was clear from the evidence that there had been an intention so to appoint him, and that he was under the impression that he had in fact been so appointed. Third, while it was not established that the Returning Officer had failed to compare the signatures of the voters on the postal ballot papers with those on the applications for ballot papers, it was clear, for the reason stated above, that he had not fulfilled his duty of doing so in the presence of the Presiding or Deputy Presiding Officer. Fourthly, it was established that the Polling Station at Dandora, with the official stamp and ballot box, had in fact been left unattended for a short period, but that on leaving the Station the Presiding Officer had put the ballot papers in his pocket for safety. Fifthly, it became clear during the course of evidence that in a number of cases application forms for postal votes had irregularly been sent out together with postal ballot papers, and that in those cases the completed application forms and ballot papers had been returned together in the same envelopes. Finally, the Commissioner came to the conclusion that none of these irregularities had affected the result of the election.

In deciding whether the election should nevertheless be voided for irregularity, Mr. Justice Forbes stated that—

for an objection to succeed, it must be something substantial, something calculated really to affect the result of the election. And a distinction is drawn between an absolute enactment contained in the body of an act, which must be strictly obeyed, and directory enactments in rules contained in a Schedule, when it is sufficient if they are complied with in substance.

Having quoted in support of this contention the judgment of Lord Coleridge, C.J., in Birmingham Case, Woodward *v.* Sarsons (L.R. 10 C.P. 733, at p. 743), the Commissioner went on to say:

In the instant case a breach of the rules was committed . . . in sending out application forms together with ballot papers. The rules transgressed, however, are clearly directory enactments, and since prospective voters named by or on behalf of both candidates were treated in the same manner and the completed application forms were inspected before the ballot papers were admitted (two ballot papers being rejected because of the absence of completed applications) the breach does not appear to me to have been one " calculated to affect the result of the election ". The breach was committed without any corrupt motive and did not in fact result in any person voting by post who was not entitled to vote. The voters concerned were obviously in no sense to blame for what occurred, and therefore deserve special consideration before being disenfranchised for a technical failure on the part of the election officers to comply with the letter of the rules (*South Newington Election Petition* (1948) 2 A.E.R. 503). In my opinion, therefore, these votes ought not to be rejected.

It had further been contended that by virtue of rule 8 of Schedule IV of the Legislative Council Ordinance, all the postal ballot papers ought to be disallowed. The rule reads:

If a postal ballot paper is filled up *or otherwise dealt with* [Editor's italics] in a manner contrary to that provided by these rules, the returning officer shall disallow such postal ballot paper, and the vote shall not be counted.

On this the Commissioner expressed the opinion that—

these words in the context can only refer to a dealing with the ballot paper by the voter . . . I cannot agree that rule 8 requires the rejection of the postal ballot papers because of infringements on the part of the election officers of the procedure prescribed.

Singapore (Electoral qualifications).—A change in the electoral qualifications was effected by the passage, on 18th November, of the Singapore Legislative Assembly Elections (Amendment) Ordinance (No. 39 of 1957). This Ordinance was assented to by the Governor on the 23rd of November, but has not yet been brought into operation up to date (14th May, 1958).

The amending Ordinance provides that the right to vote in the Legislative Assembly Elections shall be granted to citizens of Singapore only. Section 2 of the amending Ordinance provides also that the relevant residential date shall be the 1st day of February instead of the 1st day of April, in order that the work of preparing the registers in 1958 should be commenced as early as possible. Section 3 of the amending Ordinance provides that only persons who were or

who became citizens of Singapore on or before the 1st day of February, 1958, and who were resident in an electoral division on that day, shall have their names included in the first register.

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

12. Emoluments and Amenities

United Kingdom (Ministers' and Members' Salaries).—On 4th July, in answer to a private notice Question by the Leader of the Opposition (Mr. Gaitskell), the Prime Minister announced that it was proposed to make certain changes in the payments to Ministers and Members of both Houses (572 *Hans.*, cc. 1309-14). The changes may be summarised as follows:

(*a*) *Members of the House of Commons.* The basic salary was to remain at £1,000 p.a., but the sessional allowance of £2 per sitting day (see THE TABLE, Vol. XXIII, p. 87) was to be abolished, being replaced by a flat allowance of £750 p.a. The whole £1,750 was to be subject to income tax, less claims for necessary expenses.

(*b*) *Members of the House of Lords.* Peers who were not Ministers were to be entitled to claim a reimbursement of £3 3s. for each day of attendance, which would not be liable to tax. (See page 174).

(*c*) *Ministers.* The salaries of Parliamentary Secretaries were to be increased from £1,500 to £2,000, and those of Ministers of State from £3,000 to £3,750; the Financial and Economic Secretaries to the Treasury were to be equated in this respect with Ministers of State. All Ministers in the Commons, whatever their salary, were to be entitled to draw in addition £750 p.a. of the total Parliamentary remuneration (previously only Ministers of salaries below £5,000 had been entitled to draw an additional £500).

(*d*) *Officers of the House.* The salaries of the Chairman of Ways and Means (Commons) and Chairman of Committees (Lords) were to be increased from £2,500 to £3,250, and that of the Deputy Chairman of Ways and Means from £1,500 to £2,500. The two Commons Officers, together with Mr. Speaker, were to be entitled to draw £750 of their Parliamentary remuneration in addition to their salaries.

(*e*) *Leader of the Opposition.* His salary was to be increased from £2,000 to £3,000, with the addition of £750 of the Parliamentary remuneration.

By a Resolution on 9th July the House agreed that provision should be made in the Estimates for the increases (*a*) and (*b*) above (753 *Hans.*, c. 249). Effect was given to the other increases by the Ministerial Salaries Act, 1957 (5 & 6 Eliz. 2, c. 47), which received the Royal Assent on 17th July. (573 Com. *Hans.*, 1211.)

United Kingdom (Compensation for injury to Ministers and Members).—In the course of his statement on 4th July (see above), the Prime Minister observed that Ministers were the only servants of the

Crown for whom, or for whose dependants, there was no provision in the event of their death or injury on duty; such provision would be included in the forthcoming bill dealing with Ministerial Salaries. Arrangements would also be made to cover by insurance Members travelling on the business of the House. (572 *Hans.*, c. 1310.)

The provision in respect of Ministers was accordingly made in s. 3 of the Ministerial Salaries Act, 1957 (5 & 6 Eliz. 2, c. 47). On 1st August, in a written reply to a question, the Chancellor of the Exchequer made the following announcement in respect of other Members of the House of Commons:

> Arrangements have been made for a personal accident policy, the premiums for which will be met from public funds, to cover the risk of death or injury on any day on which a Member is travelling away from the Palace of Westminster on the business of the House, in the United Kingdom or abroad. The business of the House for this purpose means service on a Parliamentary Committee or delegation which has been set up directly by the House, Committee of Selection or Mr. Speaker. The policy will not cover flights in private or private charter aircraft, nor flights in prototype aircraft or test flights.
>
> The benefits provided by the policy are as follows:
>
> Death—a lump sum of £5,000.
> Permanent total loss of sight of both eyes—a lump sum of £5,000.
> Permanent total loss of sight of one eye—a lump sum of £2,500.
> Loss of two limbs—a lump sum of £5,000.
> Loss of one limb—a lump sum of £2,500.
> Permanent total loss of sight of one eye and loss of one limb—a lump sum of £5,000.
> Total disablement—£20 per week for so long as such disablement continues, but not exceeding 104 consecutive weeks for any single disablement. (574 *Hans.*, c. 228).

House of Lords: Attendance Allowance.—On 1st July a scheme was introduced for the payment of an attendance allowance in the House of Lords. For every day that they attend a sitting of the House or of a Committee thereof, Peers can claim a sum for the reimbursement of their expenses up to 3 guineas a day. This allowance is paid regardless of the frequency of a Peer's attendance, and so differs from the arrangement for repaying railway or air fares (see THE TABLE, Vol. XXV, p. 30), which requires attendance at one-third of the sittings of the House, or, in the case of Scottish Peers, one-quarter. The attendance allowance is not taxable, and must be claimed for each day of attendance by the Peer concerned. The details of the scheme are administered by the same unofficial Committee of Whips which runs the arrangements for travelling expenses.

The scheme was generally welcomed in the House in debates held on 4th and 8th July (204 *Hans.*, cc. 662 and 768). A first impression of the results of the scheme is that it has very slightly raised the numbers attending in certain quarters of the House.

South Australia: House of Assembly (Parliamentary Superannuation).—The main feature in the Parliamentary Superannuation Act

Amendment Act (No. 45 of 1957) was an increase of £50 per cent. in the rates of Parliamentary pensions payable in South Australia, with a corresponding increase in the rate of contributions.

The effect of the legislation was that members who were contributing for the maximum pension of £420 per annum could, if they so desired, elect within two months to contribute for a maximum pension of £630 per annum. It was not compulsory for members to contribute for the increased rate of pension; those who were contributing for pensions at either of the then existing rates—namely, £370 per annum or £420 per annum, could elect not to take the increase. Elections by those who were members at the time of the passing of the Act had to be made by the end of January, 1958. A new member must make his election to contribute for a pension (of either £420 or £630 per annum maximum) within two months of his election.

Pensions of existing pensioners were increased by 50 per cent.

Prior to the amending legislation of 1957, if a member died before he became entitled to a pension, the estate of the member did not get a refund of his contributions. Now it is provided that such contributions (without interest) will be refunded irrespective of whether he leaves a widow or not.

The following scale shows clearly rates of contributions and pensions now operative:

Annual Contribution	*Pension for the first 12 years' service*	*Amount for each year of service above 12*	*Maximum pension —18 years or more service*
(*a*) £58 10s.	£250 per annum	£20	£370 per annum
(*b*) £72	£300 ,, ,,	£20	£420 ,, ,,
(*c*) £100	£450 ,, ,,	£30	£630 ,, ,,

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

Union of South Africa (Pension Scheme for Members: Parliamentary Service Pensions Act, 1951, as amended).—Vol XXV of THE TABLE (pp. 72-5) contained a summary of the principal provisions of the Parliamentary Service Pensions Act, 1951, as amended by the Parliamentary Service Pensions Amendment Act, 1956. During 1957 it was again considered necessary to rectify certain anomalies in the Scheme which had become apparent since the passing of the amending legislation in 1956, and the following are the main alterations effected—

(1) In the calculation of the special pension payable to the Speaker the period between the date of dissolution of the House of Assembly and the subsequent election of a new Speaker now counts as service for any person who was a member at the commencement of the Parliamentary Service Pensions Amendment Act, 1957, and who held office as Speaker at the date of any dissolution which took place before

the commencement of the Parliamentary Service Pensions Amendment Act, 1956.

(2) The period between the date of a dissolution of the House of Assembly and the ensuing general election now counts as service for any person who was a member at the commencement of the Parliamentary Service Pensions Amendment Act, 1957, with effect from the date on which such person first became a member.

(3) Any person who was a member at the commencement of the Parliamentary Service Pensions Amendment Act, 1957, or who becomes a member after such commencement and whose service terminates in consequence of a dissolution and who is not again elected at the ensuing general election, can now contribute in respect of any remaining portion of any uncompleted year of his service, provided such portion does not exceed six months.

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

Uttar Pradesh (Ministers' and Members' Emoluments).—The U.P. Ministers and Members (Salaries and Allowances) (Amendment) Act, 1957 (U.P. Act No. XXIX of 1957) provided for a salary of Rs. 1,200 per mensem, and allowances on the scale granted to Ministers, to be paid to Ministers of State.

It also amended the U.P. Legislative Chambers (Members Emoluments) Act, 1952 (see THE TABLE, Vol. XXI, p. 179), by making provision for free furnished accommodation in Lucknow for every Member during the term of his office, with a compensatory rate where such accommodation was not provided.

West Pakistan (Members' Allowances).—On 5th June, 1956, the West Pakistan Legislative Assembly (as it was then designated) passed the West Pakistan Legislative Assembly (Allowances of Members) Bill (Act II of 1956). This made provision for (*a*) a Compensatory Allowance of Rs. 300 per month, subject to forfeiture in any particular month if a member failed to attend at least three-fourths of the meetings held in that month; and (*b*) a daily Allowance of Rs. 25 for the period of residence on duty. Travelling allowance was also provided for before and after a session on the same scale as for First-grade Government service. Power to make rules for carrying out the purposes of the Act was given to the Provincial Government.

The Act was amended the following year by the West Pakistan Provincial Assembly (Allowances of Members) (Amendment) Act, 1957 (Act XII of 1957), passed by the Provincial Assembly on 6th February. The amendment provided for the payment of travel allowances during any adjournment of a session lasting for more than ten days.

Southern Rhodesia: Legislative Assembly (Members' Emoluments).—The Ministers', Speaker's and Members' of Parliament (Salaries and Allowances) Amendment Act, 1957 (Act 36 of 1957),

made provision for a new allowance to be paid to Members of Parliament, other than Ministers, of £150 per annum. This Special Allowance, as is the case with other *allowances* paid to members, is exempt from income tax.

The scale of constituency allowances, now varying from £50 to £202 per annum according to the area of each constituency, was revised by this measure.

A further amendment to this Act (Act 3 of 1958) provided for the payment of a salary of £2,250 and an allowance of £500 per annum to a Parliamentary Secretary appointed to the Cabinet in October, 1957, and for the payment of the special allowance to a non-Member Speaker if one should be elected.

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

13. Accommodation

Western Australia (Completion of the Houses of Parliament).—In giving some details, in Volume XXV (p. 124), concerning the history of the site on which the Houses of Parliament stand, it was mentioned that the possibility of the building being completed seemed remote. Since those notes were written, however, much progress has been made.

In response to repeated requests over a long period from the Joint House Committee, supported by the speeches of members on every suitable occasion, the Government has agreed to a plan for the completion of the building over five or six years.

Many meetings and conferences have been held, and towards the end of 1957 firm plans had been prepared by the architectural division of the Public Works Department. These plans allow for many facilities and amenities which are lacking in the present building and provide on a generous scale for members' rooms, interview rooms, writing and meeting rooms, staff offices, facilities for the visiting public, and, in fact, all those things which should be found in the senior public building in the State.

The intention of the architect is to complete the frontage facing the City of Perth, with the long-range forecast that the buildings which obstruct the view between Parliament House and the city will be removed. Due to the undulating nature of the site a considerable amount of earthworks is necessary to enable building operations to commence; these works were started at the end of March, 1958, and work at the southern end of the building will then proceed.

The foundation stone of the present building was laid on 31st July, 1902, and the opening ceremony was held on 28th July, 1904. In the ensuing fifty-four years no permanent additions have been made, and the prospect of having complete and up-to-date facilities is a most welcome one for all concerned.

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

XVII. SOME RULINGS BY THE CHAIR IN THE HOUSE OF COMMONS, 1956-57

The following index to some points of Parliamentary Procedure, as well as Rulings by the Chair, given in the House of Commons during the Second Session of the Forty-first Parliament of the United Kingdom (5 & 6 Eliz. II) is taken from Volumes 560 to 575 of the Commons *Hansard*, 5th Series, covering the period from 6th November, 1956, to 1st November, 1957.

The respective volume and column 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 *Hansard* itself is generally advisable if the ruling is to be quoted as an authority.

Adjournment
—debate cannot be used to attack a county council [573]
—matters should not be raised on, if no Minister present to reply [574] 1326
—raising of matters on without notice, deprecated [560] 1084
—topic which has been business for the day cannot be referred to on [566] 770
—*under S.O. No. 9 (Urgency)*
—*Subjects refused (with reason for refusal)*
—Budget proposals, alleged premature disclosure (early opportunity for discussion on Civil Vote on Account) [565] 1404
—failure to issue a form in connection with the Rent Act (no urgency) [573] 765-70
—military assistance to Sultan of Muscat and Oman (no urgency) [754] 35-40
—refusal of Attorney-General to give fiat for leave to appeal to House of Lords (part of ordinary operation of law) [573] 1146-9
—Royal Ordnance Factories, discharges from (opportunity of debate on Summer Adjournment the next day) [574] 1523-4

Bills, public
—*Committee of the whole House*
—*amendment, general government policy cannot be discussed on a particular [570] 1465
—Instruction to
—cannot be discussed until bill read second time [570] 1297
—debate on, must be strictly relevant thereto [570] 1322, 1345

Bills, public (*continued*)
—*Report stage*
—clause cannot be selected because it was discussed in Committee and there was a division on it [572] 1388
—*Third Reading*
—discussion restricted to provisions of bill [568] 643-6

Chair
—*reflections on, cannot be accepted [561] 1114

Closure
—*acceptance of, at discretion of Chair [561] 1112

Committees, Select
—disclosure of views expressed in, in order if after Committee has reported [571] 1250

Debate
—anticipation of debate on " prayer " not possible in debate on bill [560] 1567
—cannot take place, as no question before House [561] 587
—*interventions, not business of Chair to curtail in Committee [573] 809
—second speech
—can only be made with leave of House [571] 661, [573] 1076
—should not be made in the guise of an intervention [571] 988

House of Lords
—*decisions of, may not be anticipated [561] 1094

Member(s)
—can be as severe as they like, but should use proper language [561] 17
—entitled to read quotations from a document without reading the whole document [573] 1288
—insobriety, accusation of, not in order [574] 1628
—must wait their turn to raise points of order [561] 18
—pecuniary interest, need not be declared if not direct [561] 689
—personal statements by, should be shown first to Mr. Speaker [561] 1066
—*recently injured in accident, may remain seated when speaking [563] 1060
—should not demand answer where inferences can be drawn [560] 1561
—should not impute unavowed motives to each other [564] 1668
—should refrain from private conversations [560] 137

Ministers
—not responsible for any statement made by people in other countries, unless message from another government to H.M.G. [560] 1540-3
see also Questions to Ministers

Order
—*audible remarks out of order should be withdrawn [561] 449
—*dishonesty, charge of, should be withdrawn [561] 448
—insinuations, should be withdrawn [561] 853
—points of
—Member must wait turn to raise [561] 18
—must be disposed of before another is raised [573] 768
—unparliamentary expressions should not be used by putting them into someone else's mouth [565] 754, [567] 1545

XVIII. EXPRESSIONS IN PARLIAMENT, 1957

The following is a list of examples occurring in 1957 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—*e.g.*, where an inference of dishonesty is made against members without the actual use of any such word as "dishonesty", "lie", or "untruth". Unless any other explanation is offered, the expressions used normally refer to Members or Members' speeches.

Allowed

"audacity". (2 *Sing. Hans.*, 2229.)
"blackmail". (94 *S.A. Assem. Hans.*, 5018.)
"bribery" (applied to a party). (574 *Com. Hans.*, 1381.)
"brutal majority". (1957 *W. Aust. L.C. Hans.*, 401; XXI-5 *Madras L.C. Deb.*, 131.)
"don't do your quince". (1957 *W. Aust. L.C. Hans.*, 2880.)
"evade". (XXII-7 *Madras L.C. Deb.*, 16th November.)
"know-how". (579 *Com. Hans.*, 1448-50.)
"light-hearted". (567 *Com. Hans.*, 396.)
"mischief", "mischievous reply". (IV-1 *Madras Assem. Hans.*, 60; 190 *U.P. Assem. Deb.*, 201.)

"muddle-headed". (187 *U.P. Assem. Deb.*, 156.)
"no morality over there". (569 *Com. Hans.*, 882.)
"poker face". (1957 *W. Aust. L.C. Hans.*, 3724.)
"ridiculous". (2 *Sing. Hans.*, 1759.)
"scandalous". (95 *S.A. Assem. Hans.*, 8751, 8801.)
"shameless". (95 *S.A. Assem. Hans.*, 7140.)
"sordid debate". (1957 *Aust. Sen. Hans.*, 1, p. 480.)
"stupid". (95 *S.A. Assem. Hans.*, 7140.)
"unseemly and entirely irrelevant intervention". (578 *Com. Hans.*, 454.)

Disallowed

"animal that gnaws holes". (1957 *N.Z. Hans.*, 425.)
"asses". (2 *Bihar Assem. Proc.*, dated 10th June.)
"atrociously stupid reply". (571 *Com. Hans.*, 391-2.)
"avalad" (of bad origin, illegitimate progeny). (1957 *Bombay Deb.*, 3, p. 981.)
"balderdash". (2 *Sing. Hans.*, 1832.)
"barbarous". (*India L.S. Deb.*, 19th July.)
"bellyacher". (39 *S. Rhod. Hans.*, 1490.)
"bighead". (565 *Com. Hans.*, 1215-6.)
"bigoted hero". (1957 *Queensland Hans.*, 306.)
"black sheep". (13 *Bihar Assem. Proc.*, dated 26th November.
"blobs on the Bench". (1957 *Queensland Hans.*, 322.)
"blockhead". (565 *Com. Hans.*, 1215-6.)
"bloody". (565 *Com. Hans.*, 754.)
"bogus". (1957 *Bombay Deb.*, 3, p. 840.)
"breach of faith". (1957 *N.Z. Hans.*, 588.)
"bribery". (1957 *N.Z. Hans.*, 1629.)
"buffoon". (1957 *N.Z. Hans.*, 1698.)
"cabin boy". (1957 *Vict. L.C. Hans.*, 670.)
"carefully distorted words". (1957 *N.Z. Hans.*, 2988.)
"chatter". (1957 *Vict. L.C. Hans.*, 2384-5.)
"cheating". (1957 *N.Z. Hans.*, 1385.)
"childish nonsense, childish rot". (1957 *N.Z. Hans.*, 3152.)
"clown". (1957 *N.Z. Hans.*, 732.)
"cock-eyed". (2 *Sing. Hans.*, 2257.)
"composition of the House is worse than before". (10 *Bihar Assem. Proc.*, dated 10th June.)
"conspiracy". (1957 *Bombay Deb.*, 3, p. 355.)
"coward". (2 *Sing. Hans.*, 1680.)
"criminal". (*W. Beng. Assem. Proc.*, 7th December.)
"crooked". (1957 *N.S.W. Assem. Hans.*, 1034.)
"cruel" (applied to a vote of the House). (1957 *W. Aust. L.C. Hans.*, 853.)
"cunning and deception". (188 *U.P. Assem. Deb.*, 401.)
"deceit". (*Punjab Assem. Deb.*, 19th March.)

"deliberate attempt to mislead and deceive the House". (40 *S. Rhod. Hans.*, 1384.)
"deliberate statement not in accordance with the facts". (93 *S.A. Assem. Hans.*, 2693.)
"deviating from honesty". (17 *Bihar Assem. Proc.*, dated 2nd December.)
"disgrace", "disgraceful". (2 *Bihar Assem. Proc.*, dated 11th November; 2 *Sing. Hans.*, 3003.)
"dishonest", "dishonesty". (572 *Com. Hans.*, 873; 1957 *Aust. Sen. Hans.*, 1, pp. 90, 131, 462; 2, p. 708; 1957 *N.Z. Hans.*, 570, 1970-1; *India L.S. Deb.*, 29th November; 2 *Sing. Hans.*, 2912, 2980, 3388.)
"distorted". (2 *Sing. Hans.*, 1816-7.)
"double-talk". (2 *Sing. Hans.*, 2256.)
"double twister". (1957 *N.Z. Hans.*, 3000.)
"enmity". (1957 *Bombay Deb.*, 3, p. 355.)
"false". (1957 *N.Z. Hans.*, 117, 2787; XXI-2 *Madras L.C. Hans.*, 34; 186 *U.P. Assem. Deb.*, 342.)
"fathead". (565 *Com. Hans.*, 1215-6.)
"feeble bleat". (2 *Sing. Hans.*, 2929.)
"financial bastard". (*India L.S. Deb.*, 27th November.)
"fixer". (1957 *Aust. Sen. Hans.*, 2, p. 1452.)
"flamingo". (72 *Kenya Hans.*, 11, 1623.)
"fraud". (19 *Bihar Assem. Proc.*, dated 17th June.)
"glamour man". (*W. Beng. L.C. Proc.*, 4th December.)
"glib", "glibly". (2 *Sing. Hans.*, 1834, 2912, 2980.)
"goaded". (IV-9 *Madras Assem. Hans.*, 14.)
"grossly deceiving the House". (568 *Com. Hans.*, 7.)
"guilty mind is always suspicious". (12 *Bihar Assem. Proc.*, dated 25th November.)
"half-truth". (95 *S.A. Assem. Hans.*, 6023.)
"hasfak" (agent, supporter or instrument, used pejoratively). (1957 *Bombay Deb.*, 3, p. 419.)
"hell". (2 *Sing. Hans.*, 1532.)
"henchmen". (1957 *Bombay Deb.*, 3, pp. 107, 1684.)
"hypocrisy", "hypocrite". (574 *Com. Hans.*, 1595; 1957 *N.S.W. Assem. Hans.*, 950; 1957 *N.Z. Hans.*, 731; 94 *S.A. Assem. Hans.*, 4523, 8164; *W. Beng. Assem. Proc.*, 12th December.)
"hysterical". (1957 *Vict. L.C. Hans.*, 759.)
"I doubt whether even then the Member will rest peacefully in bed, because I am sure she will then have her claws into someone else". (1957 *W. Aust. L.C. Hans.*, 3184.)
"impertinence". (2 *Sing. Hans.*, 1214.)
"impudence". (2 *Sing. Hans.*, 3392.)
"imputing ulterior motives". (1957 *N.Z. Hans.*, 2931, 2958.)
"incapable". (190 *U.P. Assem. Deb.*, 269.)

"incorrect", "not correct". (1957 *N.Z. Hans.*, 399, 1700, 2992.)
"irresponsible". (184 *U.P. Assem. Deb.*, 789.)
"kelpie". (1957 *Queensland Hans.*, 1066.)
"lack of courage". (1957 *N.Z. Hans.*, 552; 2216-7.)
"legal technicality" (applied to the rules of Order). (564 *Com. Hans.*, 223.)
"liar", "lie", "lying". (1957 *Queensland Hans.*, 522, 699; 1957 *S. Aust. Assem.*, 446; 1957 *N.Z. Hans.*, 1009, 2428, 2929; 22 *Bihar Assem. Proc.*, dated 20th June; II-4 *Madras Assem. Hans.*, 191; 190 *U.P. Assem. Deb.*, 129; *W. Beng. Assem. Proc.*, 11th July and 7th December; 2 *Sing. Hans.*, 3290-1.)
"loot". (*India L.S. Deb.*, 14th August, 1957 *Bombay Deb.*, 3, p. 749.)
"lousy". (1957 *Aust. Sen. Hans.*, 2, p. 1541.)
"low-down statement". (1957 *N.Z. Hans.*, 1833.)
"lunatic asylum". (1957 *Bombay Deb.*, 2, p. 329.)
"malicious falsehoods". (2 *Sing. Hans.*, 1748.)
"maliciously". (2 *Sing. Hans.*, 1834.)
"Member may want to be a gentleman, but he has an uphill battle". (1957 *Queensland Hans.*, 1143.)
"misappropriation". (1957 *Bombay Deb.*, 3, p. 1097.)
"mis-guide". (2 *Sing. Hans.*, 2905-6.)
"misleading statement". (1957 *N.Z. Hans.*, 2930.)
"misleading the House". (93 *S.A. Assem. Hans.*, 729.)
"misrepresentation". (*W. Beng. L.C. Proc.*, 23rd December.)
"mud throwing". (1957 *N.Z. Hans.*, 284.)
"murder, Minister can get away with". (1957 *N.S.W. Assem. Hans.*, 4193.)
"my hefty friend". (94 *S.A. Assem. Hans.*, 3951.)
"na heeyon men hain na sheeyon men" ("neither of the 'he' class nor of the 'she' class"). (190 *U.P. Assem. Deb.*, 284.)
"nalyaki" (improper, unfit, inefficient). (1957 *Bombay Deb.*, 3, p. 431.)
"nit-wit". (1957 *N.Z. Hans.*, 1983.)
"no principles". (1957 *N.Z. Hans.*, 2766.)
"nonsense". (2 *Sing. Hans.*, 1764.)
"not attending to his duty". (1957 *N.Z. Hans.*, 3036.)
"outfit" (referring to an organisation). (40 *S. Rhod. Hans.*, 681.)
"passing the buck". (40 *S. Rhod. Hans.*, 603.)
"phoney commercial brain". (72 *Kenya Hans.*, II, 1623.)
"piffle". (2 *Sing. Hans.*, 1261.)
"play to the gallery". (2 *Sing. Hans.*, 1768.)
"political corruption". (1957 *N.Z. Hans.*, 207.)
"political deceit". (1957 *N.Z. Hans.*, 1701.)

"political deception". (94 *S.A. Assem. Hans.*, 4206.)
"poppycock". (2 *Sing Hans.*, 1261.)
"prevaricating". (1957 *N.Z. Hans.*, 253.)
"profiteering". (2 *Sing. Hans.*, 2109.)
"prostitution of the Ministry". (20 *Bihar Assem. Proc.*, dated 18th June.)
"Rafferty rules". (1957 *Queensland Hans.*, 1239.)
"ratbags". (1957 *N.S.W. Assem. Hans.*, 1033-4.)
"robs people". (1957 *Bombay Deb.*, 2, pp. 284-5.)
"rubbish". (1957 *Vict. L.C. Hans.*, p. 2386; 2 *Sing. Hans.*, 3290-1.)
"rudely interrupted". (94 *S.A. Assem. Hans.*, 4038-9.)
"scurrilous". (2 *Sing. Hans.*, 1788.)
"shame". (1957 *Bombay Deb.*, 3, p. 337.)
"shamefully". (2 *Sing. Hans.*, 1834.)
"sharp practice". (1957 *N.Z. Hans.*, 2943.)
"shut up". (2 *Sing Hans.*, 3245.)
"skittle alley" (referring to the Chamber). (40 *S. Rhod. Hans.*, 250.)
"sleight of hand". (2 *Sing. Hans.*, 2913.)
"snide". (1957 *Queensland Hans.*, 500.)
"specialist at strikes and riots". (2 *Sing. Hans.*, 2958.)
"stick to the truth". (1957 *N.Z. Hans.*, 2334.)
"stupid". (72 *Kenya Hans.*, II, 1685.)
"supporting the thief". (1957 *S. Aust. Assem.*, 1508.)
"tail between his legs". (1957 *Vict. L.C. Hans.*, 1512.)
"talking-shop". (22 *Bihar Assem. Proc.*, dated 21st June.)
"these people". (40 *S. Rhod. Hans.*, 861.)
"thieves". (8 *Bihar Assem. Proc.*, dated 27th May.)
"trained seals". (1957 *N.Z. Hans.*, 2108.)
"twister". (1957 *N.Z. Hans.*, 833.)
"twisting and wriggling". (1957 *N.Z. Hans.*, 3083.)
"untruth", "untruthful". (1957 *Queensland Hans.*, 304; 1957 *N.Z. Hans.*, 117, 157, 1696, 1750, 2948; 94 *S.A. Assem. Hans.*, 4756.)
"unworthy". (1957 *N.Z. Hans.*, 589; 190 *U.P. Assem. Deb.*, p. 269.)
"vulgar abuse". (93 *S.A. Assem. Hans.*, 1057.)
"wasted the time of the House". (*India L.S. Deb.*, 6th September; 8 *Bihar Assem. Proc.*, dated 19th November.)
"yahoos". (570 *Com. Hans.*, 1321.)

Borderline

"near-treachery" (deprecated, but not expressly disallowed). (574 *Com. Hans.*, 39.)

XIX. REVIEWS

Sir Thomas Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament. Editors, Sir Edward Fellowes, K.C.B., C.M.G., M.C., Clerk of the House of Commons, and T. G. B. Cocks, O.B.E., Second Clerk-Assistant of the House of Commons, Editor Consultant, Lord Campion, G.C.B., Hon. D.C.L., formerly Clerk of the House of Commons. Sixteenth (1957) Edition, Butterworth and Co. (Publishers) Ltd., London. £5 5s.

The copyright of "Erskine May", which previously had belonged successively to individual officers of the House of Commons, passed in 1957 to a private trust. The Trustees are the Speaker of the House of Commons and three Principal Clerks of that House, the Clerk of Public Bills, the Clerk of the Journals and the Principal Clerk of Committees. The sixteenth edition is the first to appear since this change, and it therefore seems an appropriate occasion to look back at the history of this great work.

The first edition was published in 1844, twenty-six years after the last edition of Hatsell's work, to which May refers as still an authority. During the next thirty-nine years he kept his treatise up to date in a series of new editions which appeared at an average rate of one every five years—an achievement in itself. The general arrangement of the book, however, and indeed the scope of each chapter, remained the same throughout May's nine editions.

Ten years then elapsed before Sir Reginald Palgrave's tenth edition in 1893, years in which, as Palgrave pointed out, "changes in the orders and practice of the House" occurred on a scale out of all proportion to those of any earlier epoch. "Some alteration of structure" was unavoidable. It included the introduction of a new chapter and the complete re-writing of another. Palgrave noted, too, that the growth of the procedure of "Questions to Ministers" had reached such dimensions that the subject could no longer be treated incidentally as part of that of debate.

In the eleventh edition (1906) Sir Lonsdale Webster had to deal with the "Balfour" reforms of 1902. He did not, however, make any extensive re-arrangement (except of Book III), and his twelfth (1917) and thirteenth (1924) editions followed the same pattern.

A unique gap then occurred, before the appearance of Lord Campion's fourteenth edition in 1946. This was in part caused by the war, in the course of which the centenary of the work seems to have passed almost unnoticed. It was also due to the realisation that the

time had come when "the original intentions of the author would be best served by a radical and comprehensive revision and re-arrangement". This Lord Campion undertook with typical thoroughness. The resulting arrangement was repeated in his and Mr. Cocks' fifteenth edition in 1950 (which included the post-war changes in procedure), and in fact put "May" into the form which it now takes.

The work has grown steadily in size. Palgrave spoke of its being "caught up from the table . . . to parry an objection", but that feat can never have been lightly undertaken with any edition later than the sixth. Yet it is notable that throughout all sixteen editions, May's original division of the material into three "Books" has been retained.

The editors of the sixteenth edition have followed Lord Campion's arrangement and have made no startling innovations. Nor have they any far-reaching change in the organisation or procedure of Parliament to describe. The most notable event since 1950 has probably been the decision of the House of Commons to deal with the ancient and confusing body of rules concerning disqualification for Membership, and this edition is of particular value in that it describes both the former rules and the new position under the Act of 1957. The new procedure under the Army and the Air Force Act is also important.

A small but notable addition is the passage describing the functions of the Leader of the House. It is not surprising to find other minor innovations connected with "Prayers" and with the relations of Parliament with the nationalised industries. The setting out of unparliamentary expressions in a form that readily catches the eye should be a benefit to presiding officers. The index has also been greatly expanded.

The sixteenth edition, like the fifteenth, is dedicated not only to the Speaker of the House of Commons, but also to the Speakers of the Commonwealth, and the editors state that the reason why the fifteenth edition was for long out of print was the increased demand from parliaments in the Commonwealth. The day is indeed long past when "May" was a purely British authority. It now belongs to the whole Commonwealth and beyond it, wherever the British form of procedure is followed.

(*Contributed by the Fourth Clerk at the Table, House of Commons.*)

The Civil Service. By Peter du Sautoy. Oxford University Press, 1957. 10s. 6d. (U.K.)

This useful book is interesting to read, and contains in a small compass basic information and guidance for people in West Africa and in other countries intending to set up a local civil service on the British model. An index adds to its usefulness.

After tracing the development of a regular system of rule from

the earliest social units up to modern times, the writer describes the characteristics of the civil services in the various democratic countries, and in pointing out their differences observes that they are all alike in the respect that "all are devoted to the conception of an able, impartial public service which carries out the wishes of whichever government is in power without obstruction and with due regard to the rights of the individual citizen". This attitude is contrasted with the civil service principles observed in totalitarian countries which regard the civil service as a means to ensure their remaining in power and its officials as responsible for controlling the masses.

The character, functions, organisation, training and methods of the British civil service are then described in detail, with a special chapter devoted to its overseas branches.

With regard to its recruitment, the writer points out that a degree is regarded as "the mark of a mind trained to think in an orderly manner at an early age", therefore university graduates are required for direct entry into the administrative class, but in other civil services this requirement is rare. In America the upper grades are mostly drawn from the legal profession, and in France a legal training is also regarded with favour.

In summing up the qualities which the British system seeks to develop in its civil service the writer says: "The British method of training may appear unsystematic and unobtrusive, but it is based on the principle of 'training by doing' and of learning from mistakes . . . The object of the system is to let the new entrant try his skill at the work and to have, closely supervising him, an experienced superior who can eliminate potential mistakes before they can harm the public. It is an example of typically British informality and apparent lack of precision, but it has in fact succeeded in developing the necessary qualities required in a public servant."

In his final remarks about the future of the civil service the writer expresses the opinion that the present system of government control and modern developments such as the public corporation set up by statute or royal charter, which provides such a good compromise between direct civil service control and private enterprise, are likely to continue, since they are in sympathy with modern ideas; but at the same time suggests that government control is not really something new, but a swing of the pendulum back to the time of the Tudors when the State considered it right to exercise greater control over its members.

(*Contributed by Mr. C. F. L. St. George, Clerk of the Journals, House of Lords.*)

An Encyclopædia of Parliament. By Norman Wilding and Philip Laundy. Cassell and Co. Ltd. 63s.

The authors of this book are the Librarians, respectively, of the Federal Assembly of Rhodesia and Nyasaland and the Legislative

Assembly of Southern Rhodesia. They explain in their preface that a parliamentary librarian, in the course of his duties, must answer a wide range of enquiries which involve the consultation of many volumes of varying scope and content; to avoid repetition of enquiries already completed, they themselves formed the habit of amalgamating the fruits of such consultation into an information index, of which this book is an expansion. It is a work of great comprehensiveness, comprising not merely a dictionary of procedure, but including also constitutional and parliamentary information regarding all Commonwealth legislatures and setting forth the outline, with numerous touches of interesting detail, of the history of Parliament in England and Scotland. Among the appendices are included a list of all the Parliaments since 1213, tables of Ministers', Members' and Speakers' salaries in the United Kingdom and Commonwealth countries, lists of past and present holders of Ministerial offices and of the Speakership in Great Britain, and a valuable bibliography twenty pages in length. The authors are much to be congratulated upon having been able to assemble all this varied information within the brief compass of 705 pages.

The historical part of the work is not all contained in one article. The entry " Parliament " carries the story from its mediæval origins to the reign of Henry VIII, after which it is broken up, each monarch up to Victoria being given a separate entry. There is, nevertheless, some duplication in the short and comparatively uninformative notices given individually to some of the monarchs before Elizabeth I, which might well be omitted from future editions. Nor would the value of the work be diminished by the excision of entries relating to defunct Ministries of the United Kingdom, such as the Ministry of Aircraft Production.

One of the most severe problems confronting a writer of a work of large scope but limited volume is that of deciding what to omit, and where it should be omitted. An instance of the way in which the authors have exercised their judgment in this matter is to be found in their treatment of the period of delay which the House of Lords may impose upon a bill under the Parliament Act; this is in several places described simply as " one year ", the full and precise definition being given once only, under " Royal Assent ". It might be argued that the full definition would be placed more appropriately under " Parliament Act ", but in such a matter of personal judgment either position is defensible. Less understandable, however, is the absence, in any of the places where the power of *virement* is mentioned, of a single reference to the fact that it can only be exercised with the consent of the Treasury—from which it follows that there are occasions when excess votes are in fact incurred by Service Departments, even though the total estimates for the particular Service have not been exceeded. It is also surprising, in the long and informative entry on the history of *Hansard*, to find no mention of the leading

case in which that firm was involved in 1837, at the suit of J. J. Stockdale.

Moreover it must, with regret, be said that the work is by no means free from minor errors. Bills which have been reported without amendment from a Standing Committee of the House of Commons are not exempt from the consideration stage in the House. The Norman-French word for Queen, used in the formula of Royal Assent, is "Reyne", not "Reine". An alteration made in 1951 to the Standing Orders of the House of Lords provides, on the occasions when votes are equal in that House, that the decision need no longer be invariably in the negative. Although the authors show themselves to be aware of the provisions of the House of Commons Disqualification Act, 1957, Government contractors are still listed as disqualified from membership. As readers of THE TABLE will know, the Fourth Clerk at the Table was appointed in 1953, not 1952 (see Vol. XXI, p. 34); nor does he come immediately after the Second Clerk-Assistant in seniority. Ernest Bevin never resigned from the second Attlee administration, being Lord Privy Seal at the time of his death in April, 1951. Mr. A. A. Tregear is Clerk, not Clerk-Assistant, of the Australian House of Representatives, and has been so since 1955. Nor is this list exhaustive.

It is therefore much to be hoped that when preparing the book for a second edition, the authors will not confine themselves to incorporating such constitutional and procedural changes as may have taken place between this date and that, but will cast a searching eye over the existing text. By so doing, they will convert what is already something of a *tour de force* into a work of reference indispensable to all who are interested in the working and fostering of parliamentary institutions within the Commonwealth.

Parliamentary Sovereignty and the Commonwealth. By Geoffrey Marshall. Oxford, 1957. 35s. (U.K.)

This excellent work on an abstruse subject clears a tangle of assumptions about the nature of Sovereignty and about its application in practice among those nations which possess *de jure* Sovereignty in Parliament. The first part of the book analyses the traditional concept of the subject in terms of modern constitutional ideas, and surveys them in chapters devoted to the Sovereign, Judicial Review and Flexibility. The second part deals with its application in practice in the United Kingdom, Canada, Australia, New Zealand, Ceylon, India and Pakistan, and includes a useful chapter on the Statute of Westminster, which, as the author points out in an earlier place, is a centre for "conflict between academic logic and the facts of political life". A third part treats the Union of South Africa as a separate case study. The appendices sensibly contain papers otherwise difficult to find, issued by the Parliaments of South Africa and New Zealand.

It is the author's concern "to indicate the influence of theory upon political and judicial practice"; in other words, to treat the subject not entirely as an argument from the *a priori* concept of Sovereignty, but from the interaction of juristic theory and its application in practice in the Parliaments of the United Kingdom and the Commonwealth. Though the argument often seems to the layman as abstract as medieval scholasticism, it has its basis firmly fixed in practice, and for this the book is to be commended.

It only remains to point out the author's diligence, the extent of the sources he quotes from so lavishly, and the cogency and clarity of his argument. His stimulating work on a vital and complex subject will be welcomed as a valuable re-statement by constitutional lawyers, and by parliamentarians as an important work of reference.

(*Contributed by Mr. R. M. Price, Assistant Librarian, House of Lords.*)

XX. 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:

The Organisation of British Central Government, 1914-56. By *D. N. Chester* and *F. M. G. Willson*. Allen and Unwin. 32s.

Sovereignty—An Inquiry into the Political Good. By *Bertrand de Jouvenel*. Cambridge. 27s. 6d.

King and Commons, 1660-1832. By *Betty Kemp*. Macmillan. 16s.

The Structure of Politics at the Accession of George III (2nd edn.). By *Sir Lewis Namier*. Macmillan. 50s.

A Breviate of Parliamentary Papers, 1900-16. By *P.* and *G. Ford*. Oxford. £4 12s. 6d.

The Study of Comparative Government and Politics. By *Gunnar Hecksher*. Allen and Unwin. 18s.

The First Labour Government, 1924. By *Richard W. Lyman*. Chapman and Hall. 25s.

Russian Political Institutions. By *Derek J. R. Scott*. Allen and Unwin. 21s.

Cabinet, Government and War. By *John Ehrman*. Cambridge. 16s.

The House of Lords and Contemporary Politics, 1911-57. By *P. A. Bromhead*. Routledge and Kegan Paul. 30s.

La Chambre des Lords au XX^{e} Siècle (1911-49). By *Michel Bouissou*. Armand Colin, Paris.

Democracy in Western Germany. By *Richard Hiscocks*. Oxford. 30s.

The Ancient Constitution and the Feudal Law. By *J. G. A. Pocock*. Cambridge. 30s.

Speeches and Documents on the Indian Constitution (2 vols.). Selected by *M. Gwyer* and *A. Appadorai*. Oxford. 60s.

Soldiers and Governments. Edited by *Michael Howard*. Eyre and Spottiswoode. 21s.

Protection from Power under English Law. By *Lord MacDermott*. Stevens. 16s. 6d.

Constitutional History of Medieval England, Vol. III—The Development of the Constitution, 1216-1399. By *Professor B. Wilkinson*. Longmans. 35s.

British Pressure Groups: Their Rôle in Relation to the House of Commons. By *J. D. Stewart*. Oxford. 30s.

French Electoral Systems and Elections, 1789-1957. By *Peter Campbell*. Faber and Faber. 21s.

History of Local Government in South Africa. By *Dr. L. P. Green*. Juta and Co. 15s.

Parliament (2nd edn.). By *Sir Ivor Jennings*. Cambridge. 60s.

Democratic Institutions in the World Today. By *E. Werner Burmeister*. Stevens. 17s. 6d.

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XXII. MEMBERS' RECORDS OF SERVICE

Note.—*b.* = born; *ed.* = educated; *m.* = married; *s.* = son(s); *d.* = daughter(s).

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Mahmudul Hasan, S.—Assistant Secretary, National Assembly of Pakistan; *b.* 1st March, 1904, at Bulandshahr, U.P.; *ed.*, Bulandshahr and Aligarh (B.A., Muslim University, Aligarh, 1925); *m.* Ammat-ul-Fatima, 1930; 2 *s.*; joined Legislative Department of the Government of India, 10th January, 1927; transferred to Legislative Assembly Department on its creation in 1929; various ministerial appointments in that Department, 1929 to 1946; Assistant-in-Charge, Establishment Branch, in 1946, and Superintendent during Budget session of the Central Legislative Assembly (India) in 1947; on partition, opted to serve in Pakistan; appointed officiating Superintendent, Constituent Assembly, 15th July, 1947; confirmed 15th August, 1947. Assistant Secretary, Constituent Assembly in 1951, 1954 and 1955; appointed to present office, March, 1956.

Malherbe, Ferdinand.—Clerk-Assistant, Legislative Assembly of South West Africa; *b.* Pretoria, Transvaal, on 24th July, 1925; *ed.* Pretoria Boy's High School; joined the Public Service in Pretoria on 9th March, 1944, and served in the Buildings Branch of the Transvaal Provincial Administration; transferred to the Deeds Office, Windhoek, on 13th February, 1956; Staff Office, 1st May, 1956; appointed to present position, 1st December, 1957.

Tosu, Leonard Peace, B.Sc.(Econ.).—Deputy Clerk of the National Assembly of Ghana; *b.* 7th December, 1916; *ed.* Achimota College, 1935-38, and University of Hull (B.Sc.(Econ.)); Assistant Head-

master, Zion College, Keta, 1946-52; Mass Education Officer, 1956-57; appointed to present position, June, 1957.

Van Ryneveld, Mervyn Armstrong.—Second Clerk-Assistant of the Legislative Assembly, Southern Rhodesia; *b.* 1921; *ed.* Elliot High School, South Africa; active service with S.A. Forces 1941-45; Southern Rhodesia Department of Justice 1947-51; joined Staff of Legislative Assembly as Committee Clerk, 1951; Senior Committee Clerk, 1954; appointed to present position, 1957.

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NOTE.—*The detailed entries under the names of Countries relate only to such constitutional matters as need separate entries from those appearing under Subject headings; cross-references to the latter are given, but without details of sub-headings, volumes and page numbers. Where the cross-reference is to a general Article appearing under a Subject heading, it is followed by (Art.)*

ABBREVIATIONS

(**Art.**) = Article in which information is collected relating to a number of countries.
(Com.) = House of Commons.
Jt. = Joint.
S/C = Select Committee.
C.W.H. = Committee of the whole House.
Q. = Question(s).

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